Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 408)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 48

UNIVERSAL OIL PRODUCTS COMPANY,
PETITIONER,

vs.

ROOT REFINING COMPANY

No. 64

UNIVERSAL OIL PRODUCTS COMPANY,
PETITIONER,

vs.

ROOT REFINING COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONS FOR CERTIORARI FILED { MARCH 26, 1945.
APRIL 23, 1945.

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IN THE

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT.

Nos. 5648, 5546.

ROOT REFINING COMPANY,
Defendant-Appellant,

vs.

UNIVERSAL OIL PRODUCTS COMPANY,
Plaintiff-Appellee.

TRANSCRIPT OF RECORD

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Transcript of Hearing, June 5, 1941

1

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 5546 and 5648

ROOT REFINING COMPANY,

Appellant,

v.

UNIVERSAL OIL PRODUCTS COMPANY,

2

Appellee.

Before:

Hon. JOHN BIGGS, JR.
Hon. ALBERT BRANSON MARIS
Hon. WILLIAM CLARK
Hon. CHARLES ALVIN JONES
Hon. HERBERT F. GOODRICH

Philadelphia, Pa., Thursday, June 5, 1941.

Present:

3

ARTHUR C. DENISON, Esq. (Cleveland, Ohio).
ARTHUR G. LOGAN, Esq. (Wilmington, Delaware).
THORLEY VON HOLST, Esq. (Chicago, Illinois).
J. B. THIESS, Esq. (Chicago, Illinois).
RICHARD E. DWIGHT, Esq. (New York City).
THOMAS G. HAIGHT, Esq. (Jersey City, New Jersey).
HUGH M. MORRIS, Esq. (Wilmington, Delaware).
WILLIAM F. HALL, Esq. (Washington, D. C.).
CHARLES M. THOMAS, Esq. (Washington, D. C.).
EDWARD J. O'MARA, Esq. (Jersey City, New Jersey).

Mr. Denison: At Your Honors' suggestion, I will read the letter which is the only present basis of this application. The letter is addressed to Messrs.:

"Thomas G. Haight, Esq.,
15 Exchange Place,
Jersey City, N. J.
William F. Hall, Esq.,
Victor Building,
Washington, D. C.
Charles M. Thomas, Esq.,
5 Shoreham Building,
Washington, D. C.
Hugh M. Morris, Esq.,
3018 DuPont Building,
Wilmington, Delaware.

Gentlemen:

Please be advised that on Thursday, June 5, 1941, at 3:30 P. M., Daylight Savings Time, we shall appear before the Judges of the Court of Appeals for the Third Circuit at Philadelphia, Pennsylvania, either in chambers or in the courtroom, as the Court may
6 direct, and shall present to the Court the question of whether or not an investigation should be directed, in such manner as the Court may see fit, into the circumstances concerning the appeals in the cases entitled *Root Refining Company* v. *Universal Oil Products Company*, Appeals Nos. 5648 and 5546, and the connection of Morgan S. Kaufman therewith, all as partially developed in the testimony taken in the case of *United States of America* v. *J. Warren Davis and Morgan S. Kaufman*, recently on trial in the United States District Court for the Eastern District of Pennsylvania.

Our appearance before the Court will be on behalf of certain companies, including Globe Oil & Refining Company and Skelly Oil Company, against whom the decision in the said case of *Root Refining Company* v. *Universal Oil Products Company* is being asserted as *res judicata* and as a judicial precedent.

You are invited to attend if you see fit."

Signed, "Arthur C. Denison,
J. Bernhard Thiess,
Thorley von Holst."

The situation seems to us to have a double aspect, one of which pertains to certain legal rules, and rights, and remedies, and the other of which pertains to a matter much deeper, as is here indicated, as touching perhaps a former member of this Court and his connection with the case referred to which we call the Root case. I will speak, first, of the first aspect so that Your Honors may have a general knowledge of what this Root case was and what has happened in it and about it quite disconnected from the second aspect of the case.

In the District Court of Delaware an ordinary infringement case based upon a patent called the Egloff Patent was commenced in 1928, and another case based on the Dubbs Patent was commenced in 1931. Your Honors may be casually interested in being able to remember that name Dubbs, because his full name was Carbon Petroleum Dubbs, which indicates the case has to do with oil.

Those cases were consolidated for trial and came on for trial before Judge Nields, occupying some six weeks in June and July of 1932. Briefs were filed and oral argument was had about January of 1934. Judge Nields filed his opinion in April of 1934. The formal decree holding the patent valid and infringed was entered in May, 1934.

10 *Transcript of Hearing, June 5, 1941*

The case was appealed to this Court and argued here in January of 1935. The opinion of this Court was in June of 1935, re-hearing denied in August of that year. Certiorari was denied by the Supreme Court in October, and the mandate of this Court went down that same month, October, 1935.

To depart from this particular case in Delaware for a moment. Other cases had been brought by the same plaintiff, the Universal Oil Products Company, commonly called, for short, U. O. P., against refiners in several other places. I should say here that the refiners who were made defendants
11 in all these cases, including the Root case, were users of the somewhat similar apparatus installed by a firm of engineers, and it was claimed by the plaintiff that they were all sufficiently alike so that all were covered by the same considerations.

In about May of 1937, the plaintiff, the U. O. P., amended its bills in all of those cases setting up in full the decree in the Root case as affirmed by this Court—perhaps I should have said it was affirmed and sent back for the accounting in the usual way and has been pending ever since—other suits were brought against these people, one against the Skelly Company in the Court in Delaware, against the Globe
12 Company in Illinois, and against another——

Judge Biggs: Just a moment. When was the suit against Skelly Oil brought, Judge Denison?

Mr. Denison: I cannot tell Your Honor when it was brought, but the motion to amend the bill alleges that on April 11, 1930, it was filed.

Judge Biggs: I can recall, myself, filing a bill in a case in Delaware, the Universal Oil Products vs. Skelly, for an infringement of a patent.

Mr. Logan: That is an earlier case on a different patent, on the Trumbull Patent, which was affirmed by this Court and is still in the process of accounting below.

Judge Biggs: There is no question raised as to that patent in this present case. 13

Mr. Logan: Not in this case, no.

Mr. Denison: It is in no way involved. That patent has expired, but that accounting is going on against the Skelly Company. The other cases are, as I said, against the Globe Company, Illinois; and against the Globe Company of Kansas, against the El Dorado Company of Kansas, against the Rock Island-Company of Oklahoma, against the Omar Company of Oklahoma, and also against the National Refining Company, Northern District of Ohio, and against the same company, or a company of the same name in Kansas. 14

In all those cases an amendment was filed, as I say, in May, 1937, alleging that this decree rendered in the Root case amounted to an adjudication against each of the defendants in all these cases because it was said that they were so associated with the Root Company in the defense of this case that although not parties of record, they under the rules in such cases have become bound by the decree as if they had been parties of record.

I can leave that statement at that point for the moment. One of those cases against the Globe Company of Illinois in due time, or after a good deal of due time came on for trial in the District Court in Chicago before Judge Holly. 15

He decided that it was the proper thing to treat this proposed issue of res judicata as a separate issue and to try it separately. It had already been partly tried by the taking of depositions in one of the National Oil Company cases, but that matter proceeded before Judge Holly at a good deal of length, and he decided treating that issue as a separate one, first, that it was an adjudication, and then upon rehearing, he held it was not.

The reasons for that later holding I will come to later, if I may pass them at the moment.

That is the present state of that case in Chicago. It has been since then tried upon the merits and is pending before Judge Holly for his decision. The question of res judicata normally will come before the Circuit Court of Appeals if either party appeals in that case eventually.

Coming back, now, to the Root case, itself. In December, 1938, the Root Company presented to this Court a request for leave to present to the District Court a petition in the nature of a bill of review to re-hear that case upon the ground of newly discovered evidence, and it set out a new ground of defense which if true and established, completely
17 showed the invalidity of the patent.

That petition for leave to file in that Court was presented to the District Court and was argued before that Court in January, 1939. It turns out that the next day after that argument the Root Company and the plaintiff entered into a contract of settlement. It completely disposed of the controversy. The contract acquitted the Root Company of any damages for past infringement, and gave to the Root Company a full license to practice the patents involved for the remainder of their terms upon certain royalties there stated.

The plaintiff was, therefore, no longer entitled to an accounting, no longer entitled to an injunction, and, as we
18 understand the rule, the proper thing would have been to dismiss the bill because the case had become moot, and, accordingly, that contract of settlement provided:

> "It is agreed between the parties that a final decree of dismissal shall be entered in the above entitled suits substantially in the form of a final decree attached hereto and made a part hereof."

I assume that is the customary form of decree—I will not stop for it now—decree of dismissal.

The very next day, as far as we can interpret the dates here, they changed their minds about that, and under date

f January 23rd, a letter was written by the Root Company to the U. O. P., and at the foot of it agreed to by the U. O. P. which, after a recital of the steps which should be taken by the Root Company to cancel its appeal bond, said:

> "Proceedings. Neither the Root or Universal of Delaware shall take any further action or proceeding in such suits of any kind or nature whatsoever without first obtaining the written consent thereto of the other, and all proceedings, other than those referred to in the first sentence of this paragraph, heretofore had in such suits, or either of them, shall remain 20 unaffected by this agreement."

There the matter stands to this day in the District Court, in the first place, an agreement that the bill should be dismissed, and in the second, an agreement it shall not be dismissed, but nothing more shall be done about it until both parties agree.

In the controversy in Chicago the testimony of the managing officer of the Root Company was taken. I have it here in detail, I will not stop to read it. He was asked about this, and he said that he understood that the reason why this modification was desired was that the plaintiff wished to be able to use that decree as affecting the res judicata situation. I have no extra copy of this testimony, but I think all the 21 counsel have had it. As I say, there the case now stands.

We would suppose from reading Your Honors' opinion in the Cold Metal case, with which, of course, you are entirely familiar—I have it here but I presume it is perfectly in Your Honors' minds—let me say if you follow that as a precedent you would direct that the former opinion of this Court sustaining the patent be recalled, revoked, and that the case be remanded with instructions to dismiss the bill because it had become moot.

Now, I should explain a little more fully the situation of the counsel here today who signed this letter. We were

counsel for the defendant in the Root case. In a nominal way perhaps we still are. But Root and Mr. Hamilton representing the Root Company settled that case and they have no further interest in it at present.

I may properly say that on consultation with Mr. Hamilton, he said that in view of the present contract he has with the plaintiff which in many respects is a desirable contract, he doesn't feel at liberty to his stockholders to ask to have that contract of settlement set aside.

That statement was based, in part, on the fact that such information as he now has is, a good deal of it, hearsay, and
23 may not be reliable.

These various defendants in these various cases who have used this Winkler-Koch installation when suits were threatened as against all of them, got together and decided to contribute to a common fund for the defense of any one or more of them that might be sued here or there, now or then.

The Root case was the one that came on for trial first. The costs of the defense were paid out of this common fund. The controversy that later developed on the res judicata question as to that trial was whether or not, as a matter of fact, the other quasi-associates were merely contributing to the defense, as they had a right to do, without being bound, or whether they were so far controlling the case or participat-
24 ing in the control as to be bound.

That was a question of fact about which a great deal of evidence has been taken, and Judge Holly devoted some attention to that question in his opinion. Reading it perhaps with my own prejudiced eyes, it is a little difficult to say what he really did think about it in the end after he got through with the second opinion, but he thought the second time that the control of the case by the Globe Company in Chicago, and the other defendants, was the criterion, and if the Globe Company did have this participating control during the trial they certainly had lost it and the Root Company had retaken sole possession of its own case by virtue of this

settlement which was presented to Judge Holly as ground for re-hearing his first judgment about it, and that is the conclusion that now stands in Chicago as to this issue in that case, although that case also involves, as I have said, the merits of the case on the patent and infringement, and also involves a motion which the defendants made to dismiss the bill for unclean hands on the part of the plaintiff in a matter in no way connected here today, but on account of various transactions that happened down in Texas.

That motion involved, I suppose, some thousand pages of testimony. Then Judge Holly decided against the defendant, refusing to dismiss the bill for that reason. That case now stands there.

While we do not represent the Root Company in making this suggestion today, we do represent some of these other people defendants as to whom it is claimed that the decree in the Root case is an adjudication, so that these other defendants can no longer deny either the validity or the infringement of the patent. Those people are indirectly affected by the existence of this opinion, this decree, in the first place because it is claimed to be an adjudication, and no one knows, the Courts may so hold eventually; and, in the second place, because it is a judicial precedent entitled to great respect under the rule of comity deciding the validity of the patent and deciding the question of infringement in respects as to which there is similarity in many particulars between the Root cases and those cases.

So much for that—coming to what I have spoken of as the other part of the case, one would have great hesitation in speaking of the subject matter at all were it not for the great publicity which a part of the situation has received in the last few weeks throughout the United States and which, of course, is thoroughly familiar to Your Honors.

I refer to the case of the United States against Davis. That case directly involved a series of Fox transactions with

which we in this matter have nothing to do. That case, to some extent, involved the Root case; just how far, it is difficult to say.

It appears, by the testimony in that case—and Mr. von Holst here has the testimony and will present the details if the Court desires anything further—first, Morgan Kaufman, a lawyer up at Scranton, and who was, in the Davis case alleged to be the intermediary, was retained by the plaintiff in this case, the Universal Oil Products Company, in 1932, the same year in which this suit was commenced in Delaware. It appears in that case that Mr. Kaufman 29 was paid in the year 1935, and I believe the date is fairly definitely fixed as in the fall, or something of that kind, approximately at the time when the Root case was finally disposed of.

I have a memorandum that Mr. Kaufman testified he was paid that as a general retainer for the years 1932, 1933, 1934, and a part of 1935. Whether the retainer had some connection with this case, as I remember, he says, well, it may have. He said that he wasn't active in the case, and I think he said—anyhow, it appears by the records—that his name nowhere appeared in the case as counsel or attorney, or as having any connection with it. Those things 30 appeared in the Davis trial.

The Government prosecuting that case had further evidence concerning the Root case which it desired to present. Specifically, it had a receipt which one might infer was Kaufman's receipt to the Universal Oil Products Company for this payment. Defending counsel objected, and the trial Court thought apparently that any reference to the Root case was too far away, the time was too old, the Statute of Limitations had run, and I suppose the Judge thought it was too remote. At any rate, he sustained an objection to that question, and the Government understood with that ruling they could go no further into anything concerning

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the Root case and Mr. Kaufman, however far that lead may have gone. So, it stopped.

It appeared, further, in that case that along in the spring of 1935 Mr. Stokley, a cousin of Judge Davis and who owned a property in Florida, wanted to get a loan of $10,000 on his property, and Judge Davis thought that Mr. Kaufman might be able to loan it to him, and Mr. Kaufman had not done so. I think it appears that he says he didn't have the money to loan, I am not very sure about that. Anyhow, he had not done it, it came to nothing.

32

But in the fall of 1935 Mr. Kaufman did make the loan of $10,000 to Mr. Stokley, secured by a mortgage on property in Florida, property which Mr. Kaufman—I was about to state something that may not be in the record—property in Florida which was of such value that it had been sold for taxes and belonged to the Village of Mount Dora, and the negotiations for clearing up the title were conducted by Judge Davis with the City Attorney of Mount Dora, and the matter was finally closed down in Florida by Judge Davis' clerk or secretary, Mr. Lord, who went down there and turned over the money and got the mortgage.

33

That is about as far as I can go. Your Honors know that when there is a sensational investigation on by public authorities and when a Grand Jury is summoned and witnesses testify, it is all supposed to be confidential. But people sometimes talk more than they should, grand jurors tell what the testimony was, District Attorneys sometimes like to talk, and in various ways things leak out which may be true and may not be true, and nobody can safely base any allegation on that kind of information. There are other ways of getting it in positive form if it is proper to be had.

It is clear that the United States is possessed of some—I think I should say that the inference is a substantial amount,—of further information about the connection of Kaufman with this case, and what explanation there may be

why he received a large sum, if it was a large sum, for work that he apparently did not do, or whether the payment was, in fact, for services in some other matters where he did earn the money, and the important thing in the public interest at this time is to decide, conclude whether it is in the public interest that some inquiry should go further so as to disclose what this further information is.

Now, Your Honors will say, "Well, what can we do about it?" And that is not an easy question to answer.

So far as the legal questions about the present situation of the Root case and what Your Honors will think proper
35 to do with the former opinions of this Court, so far as those are concerned, Your Honors will do what you think best about that. So far as the other matter is concerned, Your Honors may think that in the interest of its own judicial integrity you should make some further inquiry.

I don't know of any precedent for appointing a master to make such an inquiry, but I don't suppose that a Court of great powers is without power to proceed in any proper way to investigate anything it thinks ought to be investigated affecting its own standing for integrity.

Further than that, we feel such an interest that we will be glad to make such an inquiry if we can. Following the
36 usual rule, and a very proper one, we understand that the Government will not give us any information whatever about facts that it has collected. That is their practice, and I suppose that is right as a matter of public policy.

This Court has no power, I presume, to direct the Department of Justice to make available to us all the information it has so that we may proceed if there is basis for it. But I have no doubt, it is unthinkable that the Department of Justice would refuse to do so if this Court had either requested it or indicated the propriety of such a course.

Judge Biggs: Let me ask you this specific question, Judge: What do you conceive to be the duties and the powers of this Court in the proposition?

37

Mr. Denison: The answer to that is two-fold. As to the present status of that opinion of this Court, whether it should be continued as the basis of a claim of adjudication or whether in view of the fact that it has now become moot, Your Honors should direct a disposition of it—as to that, our position is that you certainly have the power to direct the District Court to dismiss it as having become moot. It is within your discretion to withdraw the former opinion if you think it should be withdrawn.

That is one answer, and the other aspect of the matter I think I can answer only by a bit of repetition of what I just said.

38

I think Your Honors have the inherent power of any self-respecting court of general jurisdiction to direct that there be conducted in any manner thought proper an investigation at your instance, for the protection or vindication, as the case might be, of the reputation of the Court to the extent that it was involved.

The other thing is, as I have suggested, if Your Honors would say that you think such an investigation should be made but you think you shouldn't make it, and we should, and you think it would be proper for the Government to give us this information. Those two things are all I could say.

Judge Biggs: Judge Denison, should you not formally in writing ask for what you want on behalf of your client so there may be some formal application before us? Or do I understand you to be making some sort of an application?

39

Mr. Denison: The frank answer to Your Honor's question is I don't know just what should be done. The Root case, itself, has been settled. As counsel for the Root Company we can't do anything. As counsel for these other companies against whom the thing is alleged to be an adjudication and which other companies the plaintiff claims were really defendants in this case, as representing those companies we could file a formal application, I suppose.

Judge Biggs: We have nothing formally before us.

Mr. Denison: That is true, Your Honor. We thought, although we couldn't know, we might get an intimation from Your Honors as to what should be done.

Judge Biggs: Well, of course, Judge Denison, it would not be proper for us to give anything in the nature of an advisory opinion in the premises. Before we can act we must have something before us, I think, speaking for myself, in writing and in a formal fashion. The course you are to pursue in that connection is one for you to determine.

Mr. Denison: Yes. We anticipated Your Honors might think so, and yet we anticipated Your Honors might think the Court had an interest on its own account and should proceed on its own motion, and if we are to proceed we very likely should formally apply to Your Honors for a suggestion that the Department of Justice ought to give us this information.

Judge Biggs: Judge Denison, in order that we may have this situation formally before us, you do represent certain persons who are directly concerned in the Root Refining case, the two cases to which you have referred, is that correct?

Mr. Denison: That is part of the truth. We have always denied on account of these other defendants—we have always denied and we do deny that there was that participation by them in the Root cases that made them really parties, and we can't come in and say they were parties.

Judge Biggs: Do you conceive you might have a right to proceed in this matter amicus curiae? What have you to say to that?

Mr. Denison: We had thought of that, and I would say to that, that such a proceeding is broadly within the general thought of proceedings by amicus curiae, but I know of no precedent for it, and such proceedings ordinarily are applications for a re-argument of the case, itself, and that very case

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is out of existence, it has been settled. That is the complication there. The problem is a difficult one.

Judge Biggs: We think that an application made on behalf of a friend of the Court can be entertained at any time in any matter. However, we have not, of course, had the advantage of an examination of the authorities in the situation. Suppose we pass that for the present.

Mr. Logan, is there something you were about to say?

Mr. Logan: I represent two other clients who are interested. One is Vickers Petroleum Company which is being sued as a licensee of Universal Oil Products Company on the theory that it was using these two patents, the Dubbs Patent and the Egloff Patent, since the adjudication of this Court:

44

Now, if the adjudication had been that those patents were invalid, Universal would not be in a position where it could claim royalties for the use of those two patents from that client.

I represent another client, Eastern States Petroleum Company, which took a license after the decision and largely because of the decision. In fact, the letter which was probably the basis of it and induced them to take the license has annexed to it a copy of Judge Davis' opinion showing them, as a refiner, that they were in grave danger because those two patents had been sustained and were valid.

45

They subsequently made a settlement with Universal in which they surrendered consideration having a value of $250,000 and made a further agreement to arbitrate whether or not they were still using any of Universal's patents. They would not be in a position of being tied to that agreement, but for the original agreement they have a real and vital interest.

I feel that I can say this to the Court: I have been informed and believe that the F. B. I. made an investigation into this particular situation. I believe this Court could ask

for that, and I think this Court if it studied that F. B. I. report could come to a better decision than we can as to whether or not there was any impropriety in the employment of Mr. Kaufman and his payment of money to the cousin of Judge Davis while the matter was pending, or shortly thereafter.

I think the Court can do that on its own motion, and as a friend of the Court I call the Court's attention to the fact there is an F. B. I. report covering the entire situation, and on information and belief I understand, further, that at the trial Mr. Gahagan sought to prove that the $10,000 paid by
47 Mr. Kaufman to the cousin of Judge Davis came from the moneys he received from Universal in that he did not have that much in his bank account until he received the money from Universal.

I say that because people who attended the trial saw Mr. Gahagan standing with bank statements in his hand and offering to make that proof, which was ruled out.

I understand on information and belief, further, that a very substantial sum of money was paid by Universal to Mr. Kaufman at that time.

Mr. Denison: May I say one word further? Mr. von Holst calls my attention to the fact that I have omitted the first thing on my notes, which was to say that we do not
48 make any charge or intimation in the remotest way of any unprofessional or unethical conduct on the part of any of the counsel of record in this case. They are, all of them, above any such suspicion.

Mr. Logan: I want to join in that. I forgot that Judge Denison hadn't stated it. We had agreed that it would be stated that counsel of record for Universal were not parties to any impropriety, and certainly did not know of it. We are all convinced of that.

Judge Biggs: Gentlemen, it is necessary for the Court to attend to certain other business which is unconnected with

this case, for a period of about ten minutes. We will recess for ten minutes, and at that time, Judge Haight, we will hear you or any of the other gentlemen on the other side.

(Recess at 3:40 P. M.)

Judge Biggs: Judge Haight.

Mr. Haight: If Your Honors please, I think that I can be very brief. On the matter of an investigation, we do not feel that it is anything that we have anything to say about. It is a matter for Your Honors to decide, according to what you think is right and proper.

I do suggest, however, to Your Honors this: Kaufman and Judge Davis have been tried. As I understand it, the jury disagreed, and they are to be brought to trial again. You may feel under all of the circumstances that an investigation of Kaufman's interest in this particular litigation would be an improper thing under all of the circumstances at this particular time. I only make that as a suggestion to Your Honors. It isn't for us to say whether you should or whether you shouldn't.

As Judge Denison has said, Kaufman's connection with this case was investigated by the Department of Justice. I think as early as the fall of 1939. All the information that we had, and what not, was given to the Government at its request. It was investigated again in connection, as I understand it, with all of Kaufman's cases by the Special Grand Jury in New York the winter before last. So, so far as the public interest is concerned, an investigation has been already conducted.

Now, our brothers on the other side are particularly interested, and the only interest that they can have is to see that this judgment that was entered by Judge Nields and affirmed by this Court is not used as a precedent against

52 *Transcript of Hearing, June 5, 1941*

them or as res judicata. I think that I can cut that knot, and I do it, cutting at the same time all technical considerations.

This judgment was entered by Judge Nields in April of 1934, he having held the case for almost a year, I think. Judge Denison was a little wrong in his dates. It was appealed to the Circuit Court of Appeals and decided in June of 1935. The certiorari was disposed of in the following fall. No assertion of res judicata was made in any cases until a year and a half, maybe two years thereafter.

53 At the time this suit was pending in Delaware there were other suits pending and brought by us against other infringers. This invention which was the subject matter of the suit we considered a very great invention. It was used generally throughout the oil cracking industry and had supplanted all other oil cracking processes, except variations, which had theretofore existed in this country. Suits were pending against the Texas Company, and the Standard Oil, and what not.

This case was defended by a group of refiners in the Middle West, and this particular defendant in Louisiana, and it was on the theory that these people had as a group defended this case that the assertion of res judicata was

54 made.

We didn't know with any certainty whether that could be sustained or not, and it was only after taking testimony over a long period of time that we finally got the thing in shape and submitted it to Judge Holly.

Now, on the matter of precedent, I don't assume that this case will be a very great precedent in view of what has happened, but, however, it may be, we are willing to do this: Judge Denison, I think, is wrong in saying that there has been a complete settlement of the Root case. The decree that was made is still outstanding, and that decree carries with it an injunction and an order for an accounting. The

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accounting was settled, a license was taken, so I take it that the case is still alive.

We are willing and we offer to let Your Honors take the record in this case, the briefs with oral argument or not, as you see fit, and determine whether this case was properly decided or whether it was not properly decided. We raise no technical objection and will raise none.

If it was properly decided, then we ought to have the benefit of it. If it was improperly decided, then the other side ought to have it. I make that offer with a full realization, which I think Your Honors will appreciate, that the attitude of this Court as presently constituted is far less liberal in its treatment of patents than the attitude of your predecessors, but I make it notwithstanding that because we believe that this was—it has expired nearly three years ago, the patent—the patent we believe covered a great invention and one that should receive protection.

56

$30,000,000 of royalties were paid under this patent before this case was tried, and rather than to continue to pay royalties, two of the great oil companies of this country paid $25,000,000 for the stock of the company before this case was tried. We had some other patents, but this was the big patent.

We feel confident of the patent, but we are willing that Your Honors shall decide it in view of everything that has transpired.

57

Now, it was with that same spirit—and I think it is the spirit of fairness, even though I have to say it myself—that when this case had been decided and we had pending here a suit against the Skelly Company, the largest infringers of the group, of which the Root Company was one, whom we could have sued, whose suit we could have prosecuted in Delaware, and we had suits pending against the Cities Service subsidiaries, one in Delaware, and one in the Eastern District of Pennsylvania, the biggest infringer, if it was an

infringer, as we thought it was, that we had, but the gentlemen on the other side wanted to try one of these cases in the West, and Mr. Hall agreed with Mr. Thiess, to pick his man, his defendant, and he picked one. That suit was pending in Kansas.

A week before that case was tried that concern settled. I was packing my grip on the way to go out to Kansas to lend whatever little assistance I could in the trial of the case. And then they wanted to press with another case.

So, we agreed upon pressing the case of the Globe Oil Refining Company in the Northern District of Illinois. That
59 case we tried, and we tried for a long while. I think it was almost two months last summer, and Judge Holly has had it under consideration.

Now, we were willing to abandon the suits pending here —temporarily, I mean—to go out there and let them try these cases again in the West, and I say to Your Honors honestly that when we made those agreements we didn't know whether we could get any evidence to sustain res judicata or not, but one other thing we knew, that a defense that they hadn't interposed in this case, namely, prior inventorship on the part of another person, would certainly be raised in these other cases, and notwithstanding that,
60 we were willing to go off our own dunghill, so to speak, where there was a liberal court and where the patent had been sustained, and try it in the West, and we did.

Now, I think that is all I need or I can say to Your Honors. I haven't read the testimony in this trial that has recently taken place in Philadelphia. I have seen extracts of it from time to time in the newspapers, but only extracts, and then fragmentary, because I have been away a great part of the time that that unfortunate trial was going on, and I can't speak with any reference to that whatsoever. But so far as the interests of these applicants, I will call them now, defendants are concerned, we think that the offer that we made takes care of them.

Mr. Logan's clients, so far as I see, have no standing whatsoever in the Court. There was a suit brought against one concern on a contract made less than a year ago. It hasn't anything to do with this patent because this patent expired in '38. That was the Eastern States—I think that is the one that he mentioned—and the other is the Vickers.

The Vickers Company has been a licensee of ours for many years, but he gets an idea every once in a while that he having a favored nation clause isn't getting what other people have. Whether that is the result of the fact that he doesn't like to pay royalties over a certain period of time or not, I don't know, but in 1934 before this decision had been rendered, he entered into a contract with us, and when he didn't pay his royalties a little while ago we sued him in the State Court of Delaware, which is his domicile. In the same Court was pending this other case, this Eastern States case.

He has raised there the question that his client has not received the same royalties that others have; in other words, what we speak of as a favored nation clause has been violated.

How that has anything to do with this patent I haven't the slightest idea. The patent was gone in 1938, and he didn't stop paying royalties until when? 1939.

Mr. Logan: No, royalties run from 1935——

Mr. Haight: But you didn't stop paying then. When did you stop paying?

Mr. Logan: I think the last payment was sometime in 1935. You are suing from 1935 on for the two Dubbs Patents, and at the present time asserting they are using the Egloff Patent, which is the other patent involved in the other case.

Mr. Haight: I think Your Honors have listened to me to that extent and I don't think there is anything more that I can say.

Judge Biggs: I have two questions which I desire to ask you.

Mr. Haight: Yes, sir.

Judge Biggs: First, does either of these two patents, the Egloff Patent or the Dubbs Patent, have anything whatsoever to do, or any position in connection with the Trumbull Patent?

Mr. Haight: No, except Trumbull was the predecessor of Dubbs.

Judge Biggs: But it has nothing to do on the merits with the validity of the patent?

Mr. Haight: No, I forgot——

Judge Biggs: My connection is so slight as to be almost negligible. It was one of those base tending jobs which
65 Delaware counsel are occasionally fortunate enough to have. I think it was in 1925 and 1926, I think my correspondence was with Mr. Darby, but I have not been able to find the record of the case; I think Samuel Darby.

Mr. Haight: You are sure it wasn't with me?

Judge Biggs: No.

Mr. Haight: I don't think I did start that; it may be Mr. Hall did, I don't know.

Judge Biggs: It has nothing to do with it.

Mr. Haight: It has nothing to do with it. That case was decided by Judge Morris, as I recall it, in 1928.

Mr. Morris: I happen to recall that case, Judge Biggs.
66 There are a great many of them I wouldn't recall, my memory is faulty, but I think that a decision on that is in 12 Federal 2nd, having to do with patents, and I think that had to do with the Trumbull Patent in the Skelly Oil Company case, and I am pretty sure I decided that the Trumbull Patent was a valid patent, and there is no relation, as far as I recall, between the Trumbull Patent and the Dubbs Patent or Egloff Patent. I do not now recall really what the Dubbs Patent or the Egloff Patent happened to be, although my memory does tell me that the Trumbull Patent to which Your Honor refers was a partial bleed patent, or something to that effect.

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Judge Biggs: One other question, gentlemen: Our mandate, or the mandate of this Court has gone down in this case. Just assuming that Judge Denison and those associated with him accepted the offer, so to speak, that you have made, would we have any jurisdiction over the cause?

Mr. Haight: To recall the mandate?

Judge Biggs: To recall the mandate at this time.

Mr. Haight: Oh, I think so. They did it in New York. Certainly, you can do it by consent, and we will give our consent to anything that will enable Your Honors to reconsider the case on the record with or without argument.

68

Judge Biggs: Let me ask this question: Judge Denison, do you agree, or so far as you know—you may not be in a position so that you can agree, but do you agree or do any of counsel associated with you—Mr. Logan, I think, has already expressed himself—do you agree the Trumbull Patent has nothing to do with the situation?

Mr. Denison: Let me speak to my associates.

I think we should say yes, we agree to that. It was a part of the state of the art.

Judge Biggs: I do not desire to cause any embarrassment, of course, to any counsel in the case. I take it, then, that all counsel would agree that so far as you know, I would have no disqualification in the premises.

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Mr. Denison: We certainly do.

Mr. Haight: We agree.

Judge Biggs: You had something you desired to say?

Mr. Denison: Yes, Your Honor. The suggestion which Judge Haight has made is not only new to us here but perhaps utterly unique. It is that as I take it, they will formally withdraw their claim in all these other cases that this decision is an adjudication and agree to abandon that claim.

Judge Biggs: I didn't so understand him.

Mr. Haight: I said that this Court could reconsider, and if it decides that we are right, it is all right.

70 *Transcript of Hearing, June 5, 1941*

Mr. Denison: On the subject of res judicata I certainly understood him to say——

Judge Biggs: I don't think Judge Haight addressed himself to the subject of res judicata, as I recall it.

Mr. Denison: If I misunderstood him, I have nothing more to say about that, if he didn't make that suggestion.

He did say, also, that perhaps this wouldn't be much of a judicial precedent, but he certainly can't withdraw it as a judicial precedent. Some Judges might think that and some might not. It may be a matter of practice that the decisions of one or two Judges are not now as much respected as they
71 used to be, but I think there was another thing I should say—two other things along the line of the suggested re-argument.

I don't see how it could be done. The Root Company has settled this case, the case is moot. Perhaps that is not an obstacle to the Court's re-hearing something if it wants to. I don't know about that, I don't think it ever happened.

Judge Biggs: I understood from what Judge Haight said and also from what you said, Judge Denison, that there was an outstanding decree in Delaware based on the mandate of this Court.

Mr. Denison: Yes, it has not yet been disposed of finally.

72 Judge Biggs: On the point of validity.

Mr. Denison: The case was pending there on the accounting, but it was completely settled. There can never be an injunction because they have a license. There can never be an accounting because they discharged all liability, that is the end of that case. For some reason they just first agreed to dismiss, and then said they would not dismiss it at present, and there it is.

It has developed, as has been specified, that a new defense and a fatal defense if it can be established has been brought into the situation by the motion to re-open and re-hear this case and by complete proof of it in the Chicago

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case. If we represented the Root Company or anybody capable of agreeing and they all wished to re-hear, the defendants would not wish to re-hear the case leaving out of it a defense which in their minds is perfectly conclusive. There are innumerable difficulties in trying to work out any such idea, it seems to me.

There is this further consideration. Even if the former decision of this Court were out of the way somehow or another, if what is supposed to be shown by this F. B. I. report and what is supposed to be the fact as to the conduct of the plaintiff in this case in connection with obtaining the judgment which was here obtained and the presenting of 74
that to the other Courts as an adjudication—even if they withdrew it, of necessity they would be guilty of unclean hands conduct condemned by the Supreme Court in the Keystone case, and everyone of those cases must be dismissed now because of their unclean hands. They can't get away from that by withdrawing now after there has been pending for years and has been tried, their claim that this case was an adjudication.

May Mr. von Holst say a word, Your Honor?

Judge Biggs: Yes.

Mr. von Holst: I have this to say, if the Court please. On the question of re-argument in so far as it bears on the 75
Root situation, I was in conference with Mr. Hamilton of the Root Company lately, and they settled their litigation after long years of costly litigation, and their position, of course, is that they would not want to jeopardize their present position.

In other words, the Root Company would not for a moment consent to throwing the whole thing open again and taking their chances on a new adjudication where they might win or they might lose, and I did not understand Judge Haight's offer of a re-argument to include a statement if the decision went against Root again, that then

Root would be secure in the settlement which they made in 1939, and, of course——

Mr. Haight: We will give them that.

Mr. von Holst: With that understanding, of course, the situation is changed to that extent. My only position on that would be that there is no counsel present here authorized to speak on behalf of Root at this time in response to Judge Haight's offer. Otherwise, I don't change or modify anything that has been said heretofore, because we do not, as we made plain in the opening, represent the Root Company before Your Honors.

77 Judge Biggs: But you could appear in any re-argument or re-hearing if you desired to do so amicus curiae, and if the Court would grant you that permission. In other words, if you would appear amicus curiae and, amicus curiae, argue the case, the case being argued on the other side, the question of the jurisdiction might remain, but leaving out the question of jurisdiction, you could recall the mandate of the Court by way of stipulation, and the case could be decided completely, so to speak, as if a re-hearing had been granted; isn't that true?

Mr. von Holst: With Root secure in its settlement in the event that there should be an affirmation.

78 Judge Biggs: You then have the question of a new defense, and, conceivably, the question of unclean hands, but if the case is re-opened, I suppose it would be re-opened for all purposes. The primary obstacle would seem to me to be one of jurisdiction.

Mr. von Holst: Yes, sir.

Judge Biggs: Jurisdiction to recall the mandate. That could be done only, as I understand it, by stipulation; is that correct?

Of course, if there was a fundamental question of fraud in the previous judgment of this Court, I assume that we would retain jurisdiction—speaking for myself, now—I think

that we probably would retain jurisdiction for all purposes because the act of the Court would be a nullity, and, therefore, it would be as if the cause were still pending. It would certainly raise some very delicate questions of jurisdiction.

Were you going to say something, Judge Haight?

Mr. Haight: I was going to say this, so far as the decree is concerned, you understand the minute Root stops paying royalties, then the decree would become effective if we wanted to make it effective, and the injunction would go against him, so there is still an outstanding decree, and it seems to me that the question of jurisdiction and everything of that kind can be waived by us.

We don't want this judgment floating around if there is any question about it. We want it heard by this Court, and I don't think there can be any question about it.

So far as the other defense is concerned, you understand that has been interposed in the Chicago suit and is waiting decision there. The decision of this case would only go in so far as the matters that were here presented are concerned.

Mr. von Holst: I would like to reply to one point and pay my respect on the Cold Metals Process case. If Root should refuse to pay royalties the action would not be for the injunction, the action would be on the contract. Having entered into a license, the decree is completely superseded, the case has become moot.

Judge Biggs: We think, Judge Denison, that you should embody in a written motion or a petition so that it may be formally on the records of this Court whatever relief it is that you seek, or what you desire by way of prayer or motion to have this Court do, and then the other side of the controversy may make an appropriate reply, and the whole matter may be one of record in which the Court may determine the issue.

Mr. Denison: We will endeavor to do that.

Judge Biggs: And you might do that, if you desire, amicus curiae.

Mr. Logan: Is there to be further argument on any such motion, or is this argument to be considered nunc pro tunc——.

Judge Biggs: We will not pass on that question, Mr. Logan, at this time.

Mr. Stenographer, you will make copies of this record available to the Court and to counsel in the usual way and for the usual charges.

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Petition of Arthur C. Denison, J. Bernhard Thiess, and Thorley Von Holst, as Amici Curiae

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

Your petitioners, Arthur C. Denison of Cleveland, Ohio, and J. Bernhard Thiess and Thorley Von Holst of Chicago, Illinois, as *amici curiae*, respectfully show:

I.

Each of them is a member of the Bar of this Court, *pro hac vice*, in relation to the subject matter here involved. They file this petition as *amici curiae* pursuant to the permission of this Court announced in open court in a preliminary and informal hearing, on June 5th, instant.* They repeat here, what they then stated orally,—that there is not intended to be in this petition any charge or intimation, or any suggestion whatever, that there was on the part of any one of the counsel *of record* for the Universal in the *Root* case, any unprofessional or unethical acts of any kind or degree.

II.

Their request to this Court to take action pertaining to the above-entitled cases rests, *first*, upon their status as

*The announcement by the Court was in the following language (R. 27-8):

"Judge Biggs: We think, Judge Denison, that you should embody in a written motion or a petition so that it may be formally on the records of this Court whatever relief it is that you seek, or what you desire by way of prayer or motion to have this Court do, and then the other side of the controversy may make an appropriate reply, and the whole matter may be one of record in which the Court may determine the issue.

"Mr. Denison: We will endeavor to do that.

"Judge Biggs: And you might do that, if you desire, amicus curiae."

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officers of this Court, and *second*, upon the threat to the interests of the defendants in the other cases hereafter listed, which threat arises from the use by the above-named plaintiff of the opinion of this Court in the above-entitled causes as a judicial precedent and the use of the decrees in these cases as an adjudication against each of these other defendants so hereafter listed.

III.

89 The jurisdiction of this Court rests upon the inherent power of the Court at any time to examine into the suggested existence of fraud and corruption affecting and tainting any former action of such Court.

The petitioners thereupon show:

IV.

The above-entitled causes came on to be heard in the District Court for the District of Delaware in June and July of 1932, having been on file in final form for more than a year. The Bills of Complaint charged infringement of
90 United States Letters Patent to Dubbs, No. 1,392,629, and to Egloff, No. 1,537,593. On April 27, 1934, District Judge Nields of the District of Delaware rendered his opinion finding validity and infringement of both patents and awarding an injunction and an accounting. Interlocutory decrees of the District Court, pursuant thereto, were entered on May 18, 1934. Appeals by defendant were duly prosecuted from these decrees, argument was had before Judges Buffington, Davis, and Thompson, in January, 1935, and on June 26, 1935, this Court rendered its opinion, written by Judge Davis, affirming the decision of the District Court. On August 6, 1935, the defendant's petition for rehearing

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was denied. A petition for certiorari to the Supreme Court of the United States was thereupon presented and denied, and on October 31, 1935, the mandates of this Court went down to the District Court.

Accounting proceedings were thereupon instituted and on January 24, 1939, while the same were pending, the defendant (hereafter called "Root") entered into an agreement with the plaintiff whereby it took a license under the plaintiff's patents in suit (and others) and settled the plaintiff's claim for profits and damages and was discharged therefrom. Petitioners represented the Root Refining Company in said

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cases at all times prior to the settlement, but did not represent it in making its said settlement, and have not since, and do not now, represent it. The settlement provided that the above-entitled causes should be dismissed; but, by subsequent agreement entered into the next day, to-wit, on January 25, 1939, this provision was modified and it was agreed that neither party to the suits should take any further action or proceedings of any kind or nature whatsoever (save for the discharge of Root's *supersedeas* bond, and dismissal of certain proceedings it then had pending for rehearing) without first obtaining the written consent thereto of the other, with the result that the above-entitled causes

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are still formally pending in the District Court of Delaware.

V.

In addition to the above-entitled causes, Universal Oil Products Company (hereafter called "Universal") has filed the following suits, all of which are now pending, for infringement of the said Dubbs and Egloff patents:

> *Universal Oil Products Company* v. *Skelly Oil Company*, Equity Nos. 785 and 893, in the District of Delaware. Bills filed on April 11, 1930, and July 7, 1931.

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Universal Oil Products Company v. *Globe Oil & Refining Company of Illinois*, Equity No. 10,744, Northern District of Illinois. Bill filed July 22, 1931.

Universal Oil Products Company v. *Omar Refining Company*, Equity No. 1779, Western District of Oklahoma. Bill filed August 21, 1935.

Universal Oil Products Company v. *El Dorado Refining Company*, Equity No. 819-N, Second Division of the District of Kansas. Bill filed July 23,

95 1934.

Universal Oil Products Company v. *Globe Oil & Refining Company of Kansas*, Equity No. 821-N, Second Division of the District of Kansas. Bill filed July 25, 1934.

Universal Oil Products Company v. *Rock Island Refining Company*, Equity No. 4559, Eastern District of Oklahoma. Bill filed August 23, 1934.

Universal Oil Products Company v. *Anderson-Prichard Oil Company*, Equity No. 1645, Western District of Oklahoma. Bill filed August 23, 1934.

96 In each of these cases, save the last, the Bill was amended in May of 1937 by adding allegations charging that the defendant was bound by the decision in the *Root* cases under the doctrine of *res judicata*. In the *Anderson-Prichard* case, an amendment was filed setting up the opinions in the *Root* cases as judicial precedents. In the *Globe* case in the Seventh Circuit the issue of *res judicata* was decided adversely to the plaintiff, and after trial on the merits and submission of briefs and argument, the case is now pending for decision by the District Court. Whichever way the decision should be, the question of *res judicata* will probably be an issue on

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appeal. On June 16, 1941, counsel for plaintiff in the *Globe* case addressed a letter to the District Judge saying that they prefer that he "pay no attention to the decision of the Circuit Court of Appeals" (for the Third Circuit in the *Root* cases) "as a precedent, or as having any other effect in the *Globe* case beneficial to Universal, until this matter" (of the investigation herein suggested) "has been completely disposed of."

VI.

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Your petitioners are attorneys for each of the defendants in the cases above listed.

VII.

In the March session, 1941, the United States of America filed an indictment in the District Court of the United States, Eastern District of Pennsylvania, No. 8969, against J. Warren Davis, William Fox, and Morgan S. Kaufman, charging conspiracy to obstruct justice and to defraud the United States in the matter of William Fox, bankrupt. To this indictment the defendant Fox pleaded guilty, and the case against Davis and Kaufman came on for trial on May 19th, 1941, and was concluded on May 29, 1941, the jury having failed to reach a verdict.

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VIII.

On the trial of the indictment, certain testimony was given and evidence introduced which petitioners deem to have a relation to the decision of Judge Davis, speaking for this Court, in the *Root* case. Thereby, among others, the following facts and circumstances were developed:

Morgan S Kaufman, an attorney residing at Scranton, Pennsylvania, was retained by Universal in 1932 (the year the *Universal-Root* cases were heard on the merits in the District Court), and his employment extended for a period of three and one-half years (ending about the time the *Root* cases were decided in the Court of Appeals). He received payment in 1935 for whatever services he rendered pursuant to that retainer. He was retained in the *Root* cases,* but was never attorney of record therein. Quotation will be hereinafter made of Kaufman's testimony concerning his employment by, and work for, Universal.

Charles Lee Stokley, of Mount Dora, Lake County, Florida, is a cousin of Judge Davis; for many years, Stokley was the owner of certain real estate in Florida and was engaged in the business of orange growing; he owned a number of blocks of real property in the town of Mount Dora which had become subject to liens for unpaid paving and other taxes due to the town of Mount Dora in the sum of approximately $28,000, and in 1934, the town of Mount Dora foreclosed its liens on said property and the town purchased same at the foreclosure sale. Later in 1934, Stokley talked with Judge Davis about obtaining money to redeem said property and Judge Davis tried hard to obtain a loan for Stokley "in other places" before he took the matter up with Kaufman.

In the spring of 1935 (after the *Root* cases had been argued in the Court of Appeals, but before they had been decided), Judge Davis asked Kaufman if he would be in-

*Your petitioners state to this Court that at no time, either in the Root cases or in any other case brought by Universal on the Dubbs and Egloff patents in which your petitioners represented the defendant, did the name or person of Morgan S. Kaufman ever appear in any connection whatsoever. At the indictment trial, Kaufman did not state or intimate that he ever appeared as attorney of record on behalf of Universal in any case during the period of said retainer.

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terested in making a loan on the Stokley property. Kaufman told Judge Davis that he would consider making a loan to Stokley if the value was there (meaning in the property).

A number of letters and telegrams were exchanged between T. H. Cooley, City Attorney for the town of Mount Dora, and Judge Davis in the spring, summer, and fall of 1935 relating to the Stokley property and its redemption.

In March, 1935, Cooley had a conversation with Stokley regarding this matter, and on March 28, 1935, Cooley wrote Judge Davis regarding the Stokley property and the possibility of the town accepting $7,500 in full settlement of paving and taxes. On April 5, 1935, Judge Davis wrote to Cooley as follows:

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"United States Circuit Court of Appeals, Third Judicial Circuit, Trenton, N. J., April 5, 1935, Chambers of Judge Davis.

"Thomas H. Cooley, Esquire, Mt. Dora, Florida.

"Dear Mr. Cooley:

"Your letter of March 28th relative to the taxes of my cousin, Mr. Charles L. Stokley, was received. I hope that you will be able to secure the compromise which you mention in full settlement of his paving and taxes.

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"You state that you are acquainted with the titles to his properties and you think that they are good. I understood from him that a few years ago he had an abstract made by some title company. I may be mistaken, but that was my understanding. I told him that he would have to have that brought up to date. I am sure that the parties I have in mind, here, whom I hope to get to advance the money, would require an abstract and probably a title insurance policy.

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"I like Charlie very much. He is a good friend of yours and speaks earnestly about his admiration for you. Anything that you can do to help him in this matter will be personally appreciated by me.

"Yours sincerely,

"J. WARREN DAVIS."

On July 23, 1935 (the month following the handing down
107 of the decision in the *Root* cases), Cooley wrote to Judge Davis and in the letter he listed the properties and the amount of the taxes against each piece thereof, showing the total taxes aggregating $28,411.82, and advised Judge Davis that the town council of Mount Dora had expressed a willingness to sell the property for $10,000, and that if arrangements could be made "reasonably prompt," Mr. Stokley could get his property back for $10,069.

On, or shortly before, October 4, 1935 (while Root's application for certiorari in the Supreme Court was pending), Kaufman advised Judge Davis that he had decided to loan $10,000 to Stokley, although Kaufman did not testify that he had learned or knew anything more about the value of
108 the property than he knew in the spring. Kaufman had not yet met Stokley. Kaufman had not then, nor did he ever afterwards, see the property. On October 4, 1935, Judge Davis telegraphed Stokley that the money had been definitely promised. (On October 21, 1935, certiorari in the *Root* cases was denied by the Supreme Court.) On October 24, 1935, Cooley telegraphed Judge Davis as follows:

"Amount to be paid town direct Stokley property ten thousand net stop County taxes to be assumed by Stokley twenty seven hundred stop This is our agreement heretofore had with Stokley stop Presume Stokley is there by now advise stop"

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On October 25, 1935, Judge Davis wrote Cooley a letter in which he expressed surprise concerning the taxes due to the County and, among other things, stated:

> "Mr. Stokley may be able to raise the $13,000 from some other source but frankly Mr. Kaufman does not want to take the property unless it is free and clear of taxes and he is unwilling to put more than $10,000 into it."

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Judge Davis arranged a meeting in his chambers at Trenton, New Jersey, between Kaufman and Stokley, in the latter part of October or early in November, 1935, when Kaufman met Stokley for the first time. Thereupon, Judge Davis directed his clerk, Mr. Thorne Lord, to join Kaufman and Stokley in a conference in the Judge's library nearby concerning the matter and an agreement in writing between them was dictated to Judge Davis' secretary with Lord's assistance. After it was typed, said agreement was transmitted by Lord to Kaufman at Scranton; it was executed by him and returned to Lord, together with Kaufman's check, dated November 14, 1935, for $10,000 payable to Lord. Cooley and Judge Davis then arranged for Lord, who was looking after the matter for Kaufman, to go to Mount Dora and close the transaction. Lord reached Mount Dora on November 24, 1935, taking the agreement and check. He got in touch with Cooley and Stokley and closed the transaction by, among other things, procuring from the town of Mount Dora a deed to Kaufman to the Stokley property in consideration of $10,000, to pay which he endorsed the Kaufman check to the town of Mount Dora and delivered it to Cooley.

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Kaufman has never seen the property to which he took title from Stokley, although Kaufman has frequently visited

112 in Florida for many years. Some, but not all, of the interest due on the loan has been paid by Stokley to Kaufman, but none of the principal.

On the trial of the indictment, Kaufman, a witness on his own behalf, testified in part as follows on cross-examination by government counsel and the Court, this being all of the testimony which the Court permitted to be elicited from Kaufman by government counsel with respect to his employment by Universal and the services rendered thereunder by him:

113 "Q. Now, I show you the docket of *Root Refining Company* v. *Universal Oil Products Company*, sir.

"Mr. Gray: There is no question, if I may suggest it,—you are showing him the docket entries. Wait, there is no question put.

"By the Court:

"Q. Was it pending when the Stokley loan was made—that particular case?

"Mr. Gray: That is the question.

"The witness: I cannot tell you about that, Judge.

"By Mr. Gahagan:

"Q. Can't you look at the entries?

114 "A. My name is not—I was not the attorney of record in that case.

"The Court: You cannot answer it?

"By Mr. Gahagan:

"Q. But were you in court at any time in that case?

"A. No, sir.

"Mr. Gray: Objected to as immaterial and irrelevant.

"The Court: He has answered that he cannot answer that question, Mr. Gahagan.

115 "By Mr. Gahagan:

"Q. Well, when you say you cannot answer the question, do you mean to say you do not know the proceedings in this case?

"A. Oh, my name does not appear as a matter of record, or I did not appear in court. Those are the two questions you asked me.

"Q. Yes, sir. Now I am asking whether or not you can tell what happened in that particular case.

"Mr. Gray: Objected to.

116 "By the Court:

"Q. Were you counsel in that case?

"A. I was not of record.

"Q. Were you counsel?

"A. I was counsel—I was retained in the case but never acted actively in the case.

"Q. Was it pending while the Stokley loan was made?

"A. I really could not tell you.

"The Court: All right; go on with the next case.

"By Mr. Gahagan:

"Q. I show you, sir, a receipt——

117 (Counsel come forward to examine papers.)

"The Court: You gentlemen take your seats.

"Mr. Gainsburg: Will your Honor hear us for a moment at side bar?

"The Court: Yes.

(Conference at side bar.)

"By Mr. Gahagan:

"Q. Did you receive a fee, Mr. Kaufman, in connection with the *Universal Oil—Rool Products* case, sir?

"A. No, sir; I received a fee as general retainer.

"Q. In connection with that particular case, sir?

"A. Not in connection with that particular case—everything else that took place.

"Q. What else that took place?

"A. I was retained for three and a half years——

"Mr. Gray: Since he is going into it, your Honor,——

"The Witness: It started in 1932,——

"The Court: Go ahead, Mr. Kaufman.

119 "The Witness: —and it concluded—when I got my fee it was 1935.

"By Mr. Gahagan:

"Q. And what did you do for the company in those three years?

"Mr. Gray: Objected to.

"By the Court:

"Q. Now, did any part of that fee you received cover services either directly or indirectly in connection with this case?

"A. Well, it may have, Judge, but the way that we figured it out, that I was retained generally for so much a year, but I was not retained—I did not do anything particularly in that case.

120 "The Court: Well, that is enough.

"Mr. Gahagan: Now may I ask this question:

"By Mr. Gahagan:

"Q. Did you do any other work for them in 1936?

"Mr. Gray: That is objected to.

"The Court: Objection sustained.

"Mr. Gahagan: May I argue this point, your Honor?

"Mr. Gray: Unless your Honor wants us to come up, we won't. If you do, sir, we will.

(Mr. Gahagan confers with the Court at side bar.)

"The Court: Well, that is as far as I am going to let you go on that matter.

"Mr. Gahagan: Do you wish to see this (handing paper to counsel)?

"By Mr. Gahagan:

"Q. Mr. Kaufman, did any part of that $10,000 check money that you received from the Universal Oil, sir—— (hands paper to witness)

"Mr. Gray: Objected to, if your Honor pleases. 122

"Let me see the paper.

"Mr. Gahagan: This is the check.

(Conference at side bar between Mr. Gray and Mr. Gahagan.)

"The Court: Mr. Gray's objection is sustained."

Thus, the facts concerning Kaufman's activities pursuant to his retainer by the Universal were only partially developed, but your petitioners respectfully suggest to the Court that the foregoing limited disclosure of facts and circumstances surrounding the retainer of Kaufman by Universal and the Stokley loan do not suggest the usual and customary retainer of an attorney for legal services to be performed in connection with a pending litigation, nor a usual good faith business transaction involving the investment or loan on proper security of so large a sum as $10,000. Rather, they suggest the secret retainer of counsel for services of a clandestine nature by a party to a case pending before a Judge to, and from whom, favors were illicitly extended and received. 123

IX.

In addition to the matters set forth in Paragraph VIII above, your petitioners are informed and believe, and on

such information and belief state, that the Federal Bureau of Investigation of the United States Department of Justice, and the prosecuting attorneys of the Department have conducted extensive investigations into the circumstances surrounding the decision by Judge Davis in the *Root* case and have obtained statements from numerous persons, and have accumulated pertinent documents, all relating thereto, and that testimony pertaining to said matter has been given before grand juries in the Southern District of New York and in the Eastern District of Pennsylvania, and that this
125 testimony and evidence will reveal a great deal more concerning these circumstances than was shown by the evidence which was permitted to be adduced in the said trial, where the indictment was predicated on charges of corruption in the Fox bankruptcy proceedings.

Your petitioners are informed and believe and on such information and belief state, that, among other things, it will appear from these statements and evidence that Kaufman did not have funds to make the Stokley loan until he received money from Universal Oil Products Company in the summer of 1935, and that the amount received was in the sum of $25,000; that this money was used in part to make
126 the Stokley loan; that Kaufman did not render any services in the Root case, and that he did not render any legal services at all for Universal during the period in question, and your petitioners say that, unless the circumstances are otherwise explained, it is reasonable to infer that the said loan was made as a step in carrying out a plan or intent by Universal to corrupt justice or at least to unduly and improperly influence this Court in its decisions in the *Root* cases.

X.

In the indictment trial, the Hon. Joseph Buffington, former senior Judge of this Court, took the stand as a witness for the government and testified, among other things, that

127 he was then in his 86th year; that he sat with Judge Davis as a Judge of the Court of Appeals from 1920 to 1938; that he had known Morgan S. Kaufman and his brother, David, for fifteen or twenty years; that David Kaufman had an apartment at the Bellevue Stratford Hotel in Philadelphia, where Judge Buffington resided; that he, Judge Buffington, had frequently seen Judge Davis and Morgan Kaufman in that apartment; that in the years 1935, 1936, 1937, and 1938, he was totally deaf in his left ear and that he could hear somewhat with his right ear but was very much embarrassed by his lack of hearing; that he could hear only with 128 great difficulty. He further testified that during the year 1935, and for several years thereafter, he was very anxious about his eyes and that his eyesight was such that he could not read newspaper print for two or three years; that he was suffering from a cataract on his right eye which grew worse and which was operated on in 1939; that during the years 1935 to 1939, he used a couple of powerful magnifying glasses but that he could only see imperfectly through his right eye; that during the years 1935, 1936, 1937, and 1938, he did not have any law clerk or anyone else to look up law for him; that all briefs and matters that came before him had to be read by himself with his own eyes; that he did not have anyone to read the records or briefs to him; that 129 he relied a great deal on Judge Davis.

XI.

Although the trial of this indictment did not result in a verdict, nevertheless, evidence was adduced and testimony given tending to show corruption in five opinions of this Court, written by Judge Davis, arising out of the Fox bankruptcy in the period beginning in 1936, which was the year immediately following the decision on appeal in the *Root* cases.

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XII.

Your petitioners respectfully show to this Court that the ends of justice and the good reputation of this Court require that every fact and circumstance tending to throw additional light upon the grave question of whether its opinion and decree in the *Root* cases were obtained by fraud or corruption or undue influence or were tainted therewith, should be discovered and made available to this Court and to your petitioners, as friends of the Court, in order that
131 such further steps may be taken as may be deemed appropriate by this Court for its own protection and to avoid grave injustice to those whose interests were adversely affected by its decision.

PRAYER.

Based upon the matters hereinbefore alleged, your petitioners, as such *amici curiae*, respectfully pray:

1.

That this Court, in some appropriate form, request the United States Department of Justice to make available to
132 this Court and to your petitioners the records, documents, and other evidence in the possession of such Department, whether developed by its Bureau of Investigation in its inquiries, or by the prosecuting attorneys of the Department in grand jury inquiries, or otherwise, bearing upon the question whether there was such fraud, corruption, obstruction or distortion of justice as tainted and invalidated the decrees rendered by this Court in the above-entitled causes on June 26, 1935; and also to request (if such request be necessary) the United States Attorney General or the United States District Courts in charge of the grand jury proceedings hereinbefore described in the cities of New York and Philadelphia, directed to the same subject matter, to make avail-

able to this Court and to your petitioners a stenographic transcript of such proceedings.

2.

That based either upon the facts now known as hereinbefore stated, or on such facts and such further facts as may be developed pursuant to the foregoing Prayer No. 1, this Court appoint a Master with authority to examine, investigate, and to make and report to this Court his findings and conclusions concerning the relationship and dealings between Universal Oil Products Company, Morgan S. Kaufman and Judge Davis and any and all persons acting for or on behalf of any of them in connection with these causes, and the entire subject matter of the prosecution and disposition of these causes; that such Master be authorized and directed to make the requests specified in above Prayer No. 1, if the Court shall not have already done so; that he have power to issue subpoenas on the request of the parties interested or upon his own motion; that he have power to administer oaths and all the powers common to Masters in the Federal Courts; that he rule upon and, for the time being, determine (subject to the final action of the Court) all questions of evidence and of procedure which may arise before him; that he examine witnesses himself or permit them to be examined and cross-examined by these petitioners and by Universal within such reasonable limits as he in his discretion may impose; that he have power to issue subpoenas *duces tecum* and that he promptly report to the Court for its action any matters that he may think proper for such report; that he may thus take evidence and proceed in any district of the United States which he may think proper; that he proceed to his final report with all convenient speed; and that his reasonable fees and expenses be paid in the first instance by these petitioners and be ultimately taxed against these petitioners or Universal as the Court may direct.

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3.

That the Court make such other or further order in the premises, either in its own interest thereon, or for the benefit and relief of the petitioners, in respect of their collateral interests as set forth in Paragraphs V and VI herein, as to the Court shall seem meet and proper.

4.

That Universal be ordered by this Court to make answer
137 to this Petition, if it chooses so to do, within ten (10) days after the filing of this Petition and the service thereof upon counsel for Universal in these causes.

ARTHUR C. DENISON,
J. BERNHARD THIESS,
THORLEY VON HOLST,
As Amici Curiae.

June 18, 1941.

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BRIEF OF AMICI CURIAE IN THE FOREGOING PETITION.

As stated in the oral discussion, this subject matter has two aspects: *First*, that of the public interest, as crystallized in the direct interest of the court in the integrity of its former proceedings, and, *second*, that of the private interest of certain defendants in other cases where the Root decree is being urged as an adjudication or as a precedent, or both. This same double aspect is now more formally presented. So far as Root itself is concerned, it has settled its case, is represented by other counsel than those who appeared for it at the trial, and has not authorized any action.

I.

To the suggestion that there should be an investigation in the interest of the court itself, it would not have been seemly that counsel for Universal should make any objection; and they have not done so.

A court never loses jurisdiction to inquire into the question of fraud and corruption in its own decrees. Black on Judgments, Second Edition, Section 391. See also *Noonan* v. *Bradley*, 79 U. S. 121 (p. 129) where Mr. Justice Clifford emphasized the exception in cases of fraud, to the general rule that jurisdiction is lost when the mandate is sent down.

While the precedents, prior to *United States* v. *Manton*, 107 F. (2d) 834, are fortunately almost entirely limited to instances where fraud has been perpetrated by the parties alone, it is axiomatic that the same principle would apply where the court itself has been also involved.

The underlying principle is well expressed in *Rowland* v. *Kreyenhagen*, 24 Cal. 52, 84 A.L.R. 595-6, where it was stated:

> ". . . In contemplation of law, an order obtained upon a false suggestion is not the order of the court,

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and may be treated as a nullity. If, under color of such an order, the proceedings have in part found their way back to the court below, yet in law they are considered as still pending in the appellate court, and that court may take such steps as may be necessary to make the fact and law agree."

The question now confronting the Court is not whether the Root decision was right or wrong, but the much more fundamental question of whether it was tainted with corruption. This was expressly held in *United States* v. *Manton*, 107 F. 143 (2d) 834, where the Court of Appeals said (p. 846):

". . . Judicial action, whether just or unjust, right or wrong, is not for sale; and if the rule shall ever be accepted that the correctness of judicial action *taken for a price* removes the stain of corruption and exonerates the judge, the event will mark the first step toward the abandonment of that imperative requisite of even-handed justice proclaimed by Chief Justice Marshall more than a century ago, that the judge must be 'perfectly and completely independent with nothing to influence or control him but God and his conscience.'"

144 Elaboration and argument cannot increase the probative effect of the substantial facts already known, viz., that Universal paid a sum of money to Kaufman while this case was pending, apparently purporting to be for services as an attorney in some connection with this case; that Kaufman never appeared in this case and is not known to have performed any services whatever as attorney in connection therewith; that while the case was pending, both before and after the decision by this court, Judge Davis was soliciting, purportedly for a friend and relative, financial favors from Kaufman; and that shortly after the case was finally decided Kaufman paid $10,000, purportedly as a loan to this relative,

upon the supposed security of a mortgage upon property in Florida which Kaufman had never seen, and that Judge Davis had charge of the closing of this loan. These facts are to be viewed also against the background attending Judge Davis which is alleged by the United States in the Fox cases. Whether such a situation is one which will move the court to proceed into a full investigation, is for the court to decide.

In the question of procedure, commonly the court might wait somewhat upon the action of the Department of Justice; but the Department has perhaps decided that the Root affair is barred by the statute of limitations. In any event, the United States has chosen to bring to trial the situation 146
which arose in the Fox bankruptcy matters, and it is therefore at least uncertain whether criminal proceedings will ever be brought based upon such a conspiracy as there may have been to obstruct justice in the Root cases. Nevertheless it is apparent that the machinery available to the Department of Justice through the Federal Bureau of Investigation or otherwise and to the Grand Juries is far more likely to have elicited all of the pertinent facts than any original investigation which could now be conducted; and it follows that the natural first step in any investigation now to be made by or for this court, would be to make available such information as has been thus elicited.

As to procedure, our prayer is, first, that the court, having determined upon an investigation, provide for making this existing information available to it as the basis of determining its further steps, and our suggestion is that, if the court hesitates to make any such order initially, it may well delegate authority in this particular to a Master, to be appointed to represent the court and conduct the investigation in its behalf. To a request by such a Master it seems probable that the Department of Justice and the District Courts would gladly accede. Subsequent proceedings before the Master might very likely be guided by the information so elicited. 147

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This Court has undoubted power to request the governmental departments to make available to it, or to those designated by it, the evidence which they have accumulated in the course of their investigations. As Judge Kirkpatrick pointed out in *In re Grand Jury Proceedings,* 4 F. Supp. 283 (p. 284):

> "The rule of secrecy [in Grand Jury proceedings], it will be noted, was designed for the protection of the witnesses who appear and for the purpose of allowing a wider and freer scope to the grand jury
149 itself, and was never intended as a safeguard for the interests of the accused or of any third person. The fact that the grand jury has adjourned and been discharged has often been considered as one reason for abandoning secrecy as to its deliberations. It is, however, not the only circumstance which may move the court, nor is it essential to the exercise of its discretion. It yields to the general consideration whether the ends of justice will be furthered by the disclosure. In every case the court is called upon to balance two policies, the one requiring secrecy, the other disclosure."

150 In *Goodman* v. *United States,* 108 F. (2d) 516, the Court of Appeals for the Ninth Circuit said (p. 521):

> "It is proper to add that the court may at any time in the furtherance of justice remove the seal of privacy from grand jury proceedings." (Citing cases.)

Whereas at the hearing before this Court on June 5th, other courses besides discovery were suggested, we submit that the first step must necessarily be that of marshalling all the facts, and that no proper decision can be made either by this Court or by any of the affected parties until these facts are fully known. Although this is a Court of appellate,

and not of original, jurisdiction, there is no doubt that it has power and authority in a matter of this kind to consider evidence bearing upon the question of fraud. This was held in *Dakota County* v. *Glidden*, 113 U. S. 222, in which case the Supreme Court received and considered certain transcripts of proceedings of the Board of Commissioners of Dakota County, not contained in the record before it, showing that, subsequent to the trial in the District Court, the cause of action had been compromised and settled and had become moot. The Supreme Court said (pp. 225-226):

"It is said that to recognize this compromise and 152
grant this motion is to assume original instead of appellate jurisdiction.

"But this court is compelled, as all courts are, to receive evidence *dehors* the record affecting their proceeding in a case before them on error or appeal.

"It is by reason of the necessity of the case that the evidence by which such matters are brought to the attention of the Court must be that, not found in the transcript of the original case, because it occurred since that record was made up.

"To refuse to receive appropriate evidence of such facts for that reason is to deliver up the court as a 153
blind instrument for the perpetration of fraud, and to make its proceedings by such refusal the means of inflicting gross injustice."

That part of your petitioner's prayer as *amici curiae* that asks the Court to appoint a Master with appropriate powers to conduct the inquiry is authorized by the procedure followed in *American Wood Paper Company* v. *Heft*, 131 U. S., Appendix xcii. In that case on the appeal to the Supreme Court from the Circuit Court for the Eastern District of Pennsylvania, it was represented to the Supreme Court that

the appeal should be dismissed because there had been a settlement between the parties and that the appeal was being prosecuted

> ". . . not to determine any real controversy between the parties to the record, but to obtain a decree on which to found an application for an injunction against persons really interested, adversely to the appellants, but not parties to the record, and among them against the person in whose behalf the motion is made."

155 The Supreme Court thereupon entered a rule to show cause why the appeal should not be dismissed and gave leave to both parties "to take depositions on sufficient notice before any Commissioner of the United States, in support of the rule and against it." The power of an appellate tribunal to authorize the taking of testimony before a Commissioner necessarily presumes authority and jurisdiction to appoint a Master with appropriate powers, and for obvious reasons, in the instant case, the investigation should be in the hands of one with authority to rule on evidence, to issue subpoenas, to report his findings and conclusions, and to exercise all the customary powers of a master in chancery.

156 After full consideration, it seems to us premature to suggest any specific action in the *Root* cases, with reference to the opinion of this court or their present moot status in the District Court. If it should be determined that the conduct of Universal in the subject matter of this litigation was tainted with corruption, accomplished or attempted, that would be the end of the matter. It is not conceivable that this court would then take any action other than to direct that the former opinion be withdrawn and the bills be dismissed, for what would be (charitably) called "unclean hands."

Upon this (the first and general) aspect of the matter, Universal's suggestion that the case be reargued is in effect

to say, "Let us forget all about the corruption, and take a *nice, fresh, clean* start." This suggestion will not appeal to this Court.

II.

To the suggestion, made on the former oral discussion, whether the court should now take hold of the *Root* cases and make some proper order therein in view of the fact that they have become moot, Universal had no response except to offer to consent to a reargument in this court *upon the existing record*—an offer which as we then pointed out, and as is still the fact, no one is in position to accept, 158
for Root, to whom alone the offer could be tendered, has settled its case. This suggestion was perhaps inspired by observing that this had been the course adopted by the courts of the Second Circuit in the *Manton* cases; but in them the situation was totally different, and that action furnishes no precedent for action here. It will be noted that in each of the five civil cases mentioned in the opinion in the *Manton* case (107 F. (2d) 834), in which five cases corruption was shown, the *defendant* was the guilty party; and obviously any relief which could be granted *to the plaintiff* therein, after the Judge's disqualification had been shown, was necessarily limited to the reargument of the case on the merits.* It is equally obvious that where the *plaintiff*, in an equity 159
suit, has corrupted or attempted to corrupt the court, or has otherwise obstructed justice, different legal consequences result, based upon the maxim that he who comes into equity must come with clean hands.

If the *Root* decision was corruptly obtained, then, under the decision of the Supreme Court in *Keystone Driller Co.* v. *General Excavator Co.*, 290 U. S. 240, *even though the Root decision were right*, the Court *sua sponte*, would vacate the decrees and dismiss the bills, and the plaintiff would be for-

*In four of the cases reargurnents were granted. The fifth (Smith v. Hall) had been finally affirmed by the Supreme Court.

ever barred from relitigating the cause of action involved in the *Root* case, either in this Court, or in any other where the decree had been set up as *res judicata* or as a precedent.

In the *Keystone* case, it appeared that in a prior case against the Byers Machine Company, the plaintiff had fraudulently suppressed evidence of a defense in the nature of a prior use by one Bernard Clutter. In the *Byers* case, the plaintiff prevailed in the lower court and on appeal, and in a subsequent case against the General Excavator Company, plaintiff asserted the *Byers* decree as a precedent in its Motion for Preliminary Injunction. In the *Excavator*
161 case in affirming the action of the Court of Appeals for the Sixth Circuit, which had dismissed the complaint for unclean hands, the Supreme Court said (p. 247):

> ". . . While it is not found, as reasonably it may be inferred from the circumstances, that from the beginning it was plaintiff's intention through suppression of Clutter's evidence to obtain decree in the *Byers* case for use in subsequent infringement suits against these defendants and others, it does clearly appear that the plaintiff made the *Byers* case a part of its preparation in these suits. The use actually made of that decree is sufficient to show that plaintiff did not
> 162 come with clean hands in respect of any cause of action in these cases."

The *Keystone Driller* case emphasizes the jealousy with which courts protect their own integrity, and shows that tampering with the processes of justice must be dealt with by visiting upon the wrongdoer the most drastic penalties for his offense.

Respectfully submitted,

ARTHUR C. DENISON,
J. BERNHARD THIESS,
THORLEY VON HOLST,
As Amici Curiae.

PETITION OF ARTHUR G. LOGAN AS AMICUS CURIAE.

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To the Honorable Judges of the United States Circuit Court of Appeals for the Third Circuit:

Your petitioner, Arthur G. Logan, of Wilmington, Delaware, as amicus curiae, respectfully shows:

1. That he is a member of the Bar of this Court and files this petition as amicus curiae pursuant to the permission of this Court announced in open court in a preliminary and informal hearing on June 5, 1941.

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2. That he has read the Petition and Brief of Arthur C. Denison, J. Bernhard Thiess, and Thorley Von Holst filed herein as amici curiae, and incorporates the same herein by reference and adopts the allegations, prayers and arguments contained therein. He states further that it is not only his intention that this petition shall not charge, intimate or suggest that there was any unprofessional or unethical acts of any kind or degree on the part of any one of the counsel of record for Universal Oil Products Company in the above-captioned causes, but that he is of the belief that none of said counsel of record knew of the employment of Morgan S. Kaufman by Universal Oil Products Company to act in the above-captioned causes.

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3. Your petitioner was counsel of record for Root Refining Company below and in this Court until the time said Root Refining Company settled with Universal Oil Products Company, hereinafter referred to as "Universal."

4. Your petitioner is attorney for Eastern States Petroleum Co., Inc., which is vitally interested that a proper investigation be made to determine whether there was any fraud, corruption, obstruction, or distortion of justice taint-

166 *Petition of Arthur G. Logan as Amicus Curiae*

ing or invalidating the decrees entered by this Court in the above-entitled causes on June 26, 1935, for the following reasons:

During June of 1935, Eastern States Petroleum Co., Inc., a Delaware corporation, (hereinafter referred to as "Eastern States") was operating a refinery at Houston, Texas, and was planning to build a gasoline cracking unit and to operate the same in connection with said refinery. At that time it was studying various cracking processes to determine whether or not a license should be taken under any particular process and to determine the type unit to build. Universal had been urging said Eastern States to take a license from it, build a Dubbs unit and use the Dubbs Cracking Process, covered by United States Letters Patent No. 1,392,629, issued to Carbon P. Dubbs, assignor of Universal. Immediately after the decision of this Court rendered on June 26, 1935, an agent of Universal had a discussion with the President of Eastern States and thereafter, on July 3, 1935, a letter was written by Universal to Eastern States urging Eastern States to build a Dubbs unit and practice the Dubbs Cracking Process, covered by said United States Letters Patent owned by Universal. Said letter set forth, inter alia:

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168 *"Patents and Patent Protection*

"A. As a result of our concentration on the oil cracking and treating art, we have built up a formidable patent structure consisting of thousands of patents and applications under which our licensees receive full protection. All of our more important inventions have been fully covered by patents and patent applications in the United States and foreign countries.

* * * * *

"In this connection, a decision of far-reaching importance was rendered in April 1934 in the United States District Court of Delaware in our suit against one of our own licensees, the Root Refining Company, for the operation of an infringing and unlicensed cracking process of the so-called Winkler-Koch type. The final paragraph of the Judge's opinion of the Court reads as follows:

> "'I conclude that the patents in suit are valid, that the charge of infringement has been sustained, and that the plaintiff is entitled to a decree, with 170
> injunction and accounting.'
>
> "An appeal from the decision was taken to the United States Circuit Court of Appeals by the Root Refining Company and on Wednesday of last week this Court unanimously affirmed the opinion of the District Court. For your information, we are attaching herewith the printed copy of this opinion.
>
> "It is our intention to move rapidly against others who have failed to recognize our rights in this field which we have established and will endeavor to enforce through the courts for the protection of our licensees." 171

Annexed to said letter was a printed copy of the opinion filed on June 26, 1935, in the above-captioned causes which had been written by Judge Davis. Not only did said Universal write as aforesaid to Eastern States, with an implied threat to sue in the event Eastern States built a cracking unit and did not take a license from Universal, but said Universal wired to all its licensees throughout the United States as follows:

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"HAPPY TO INFORM YOU FEDERAL CIRCUIT COURT OF APPEALS PHILADELPHIA UNANIMOUSLY CONFIRMS VALIDITY OF DUBBS CLEAN CIRCULATION PATENT AND EGLOFF MULTIPLE COIL SELECTIVE CRACKING PATENT AND DECLARES BOTH INFRINGED BY OPERATION SO CALLED WINKLER KOCH UNITS OUR SUIT AGAINST ROOT REFINING COMPANY STOP EXPECT NOW TO MOVE VIGOROUSLY FORWARD IN OUR PENDING SUITS AGAINST OTHER INFRINGERS AND TO INSTITUTE SUCH FURTHER SUITS AS NECESSARY IN PROTECTION YOUR AND OUR INTEREST STOP COPY OF OPINION WILL BE MAILED YOU."

173 Universal also caused stories of said opinion to be printed in oil trade journals throughout the United States and made known the decision of this Court and the opinion of Judge Davis throughout the oil industry, including financial circles interested therein.

By virtue of the publicity Universal caused to be given to the decision of this Court, it became difficult for Eastern States to complete financial arrangements to build a cracking unit without a license from Universal. Therefore, based, in part, upon the threats contained in the letter from Universal of July 3, 1935, and the difficulties which Eastern States found would exist in financial circles if it did not
174 have a license from Universal, and in the belief that said decision of this Court had been honestly and properly rendered, Eastern States took a license from Universal and agreed to pay Universal royalties for the use of said United States Letters Patent No. 1,392,629, issued to Carbon P. Dubbs, and United States Letters Patent No. 1,537,593, issued to Gustav Egloff, assignor of Universal.

Thereafter, Eastern States found that said Dubbs Cracking Process was not efficient and that it was impossible to obtain through the use of said Process yields and quality of products which it had been led to believe could be obtained. Thereupon, Eastern States refused to pay royalties

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and sought to terminate said License Agreement. Universal refused to allow it to terminate said License Agreement and brought suit for royalties in the Superior Court of the State of Delaware, in and for New Castle County, said suit being Universal Oil Products Company vs. Eastern States Petroleum Co., Inc., No. 49 May Term, 1937. In the belief that it had been led to enter into said License Agreement through false representations concerning yields and quality of products, Eastern States filed a Bill of Complaint in the Court of Chancery of the State of Delaware, in and for New Castle County, entitled Eastern States Petroleum Co., Inc. vs. Universal Oil Products Company, and prayed that said License Agreement be cancelled. Thereafter, under date of September 1, 1940, the parties entered into a settlement agreement under which said License Agreement was terminated and Eastern States obtained a release from all claims for royalties up to September 1, 1940. For this release Eastern States surrendered a claim against an affiliate of Universal for a sum in excess of $2,000,000.00. As part of the settlement agreement Eastern States also agreed that in the event it was using any of Universal's other patents, it would take a license thereunder. Arbitration proceedings are now pending to determine this question.

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Your petitioner has been advised, informed and believes and therefore avers that, but for the decision rendered by this Court on June 26, 1935, Eastern States would not have entered into the License Agreement with Universal, would not have been obligated to surrender as consideration the claim aforementioned in excess of $2,000,000.00, and would not have entered into the present agreement it has with Universal to take a license under any patents it may now be using. Your petitioner therefore avers that in the event the judgment rendered by this Court on June 26, 1935, was obtained by fraud, corruption, obstruction, or distortion of justice by Universal, then Universal is accountable to East-

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178 *Petition of Arthur G. Logan as Amicus Curiae*

ern States for the damage occasioned to Eastern States through the use made by Universal of said judgment to induce Eastern States to enter into the License Agreement with Universal as aforesaid.

WHEREFORE, your petitioner joins in the prayers set forth in the petition of Arthur C. Denison, J. Bernhard Thiess, and Thorley Von Holst, as amici curiæ, and prays further that the information and evidence referred to therein be made available to your petitioner, and for such other and further relief as to this Honorable Court may seem meet.

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ARTHUR G. LOGAN.
Arthur G. Logan as Amicus Curiæ.

June 25, 1941.

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ANSWER OF UNIVERSAL OIL PRODUCTS COMPANY TO PETITION AND BRIEF OF ARTHUR C. DENISON, J. BERNHARD THIESS AND THORLEY VON HOLST AS *AMICI CURIAE*.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The answer of Universal Oil Products Company, plaintiff-appellee in the above entitled case, hereinafter referred to as Universal, to the petition and brief of Arthur C. Denison, J. Bernhard Thiess and Thorley von Holst as *amici curiae* respectfully shows:

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I. Universal admits the allegations of paragraph IV of said petition except that it denies that any agreement had ever been consummated for the dismissal of the above entitled causes. Universal alleges that there is outstanding a decree in the above entitled causes, and that said causes, as alleged in said petition, are still pending in the United States District Court for the District of Delaware.

II. Universal admits the allegations of paragraph V except that, in view of the letter written to Judge HOLLY by Universal's counsel and hereinafter quoted from, Universal will not raise *res adjudicata* on any appeal from Judge HOLLY's decision. Said letter was sent on June 16, 1941 by 183
Alexander F. Reichmann of Chicago, who represents Universal as chief counsel in the said *Globe* case, to Judge HOLLY before whom that case is pending. The letter recited the reason for the delay in the sending of the same, namely, Mr. Reichmann's absence, and the proceedings before this Court on June 5, 1941, and the letter of petitioners of June 2, 1941, upon which the said proceedings were based, and also the offer made on behalf of Universal at said hearing that it was willing to have this Court reconsider the above entitled cases on the record and the old briefs supplemented, if desired, by further argument, and that all counsel for Universal felt

184 *Answer of Universal Oil Products Company to Petition and Brief of Arthur C. Denison, J. Bernhard Thiess and Thorley Von Holst as Amici Curiae.*

that Judge HOLLY should be advised of said proceedings while he still had the case under consideration. The remaining pertinent parts of the letter are as follows:

> "Counsel for Globe, while not rejecting the offer, did not accept it.
>
> "The upshot of the matter was that the Court suggested to counsel for Globe that if they desired they file some formal paper specifying exactly what
185 remedy they wanted, and which they thought the Court had authority to give, and Universal would then be given an opportunity to reply. Up to the present writing, no further steps have been taken by counsel for Globe.
>
> "Under the circumstances, and especially in view of Universal's offer to have the old decision reconsidered, counsel for Universal would prefer that in reaching your decision in the Globe case, you pay no attention to the decision of the Circuit Court of Appeals as a precedent, or as having any other effect in the Globe case beneficial to Universal, until this matter has been completely disposed of. We desire,
186 however, that full weight and credit be given to Judge Nields' decision, if, in the determination of the case, you wish to consider it."

Since this letter was written both parties have written Judge HOLLY that they prefer to have him decide the case on the record already made, Globe's letter adding "leaving other questions for future determination".

III. Universal admits the allegations of paragraph VI, and believes that the allegations of paragraph VII are true.

Answer of Universal Oil Products Company to Petition and Brief of Arthur C. Denison, J. Bernhard Thiess and Thorley Von Holst as Amici Curiae.

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IV. Universal has no knowledge as to the allegations of fact, as distinguished from inferences and insinuations, of paragraphs VIII, X and XI except as the same may be gathered from a transcript of the proceedings in the trial therein referred to, but alleges that the said paragraphs do not fully set forth all the facts in respect to the matters referred to in said paragraphs.

As to the allegations of fact of Paragraph IX of the petition, Universal alleges that a thorough investigation was made by the Federal Bureau of Investigation and the Department of Justice in Grand Jury proceedings of Mr. Kaufman's relation to the *Root* case in connection, as Universal understands, with an investigation of all cases in which Mr. Kaufman had been interested in the Circuit Court of Appeals. Universal has no knowledge as to the other allegations of fact in Paragraph IX except as hereinafter specifically set forth.

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V. Morgan S. Kaufman, referred to in the said petition, was retained as an attorney for Universal in the year 1932 prior to the trial of the above entitled action, by the then general patent attorney of Universal who had authority to employ him, under a retainer which required him to make his professional services available to Universal in the *Root* case and all cases then pending or which might be subsequently brought, and disenabled him from representing any other company or party whose interests might be antagonistic to those of Universal. He was continued under such retainer until 1938. His employment did not end as alleged in said petition "about the time the Root cases were decided in the Court of Appeals." Although he held himself ready and willing to render such services as Universal might require of him, his services were not utilized to any

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substantial extent prior to the latter part of the year 1935. In October of 1935 (not "in the summer of 1935" as alleged in said petition), after the Supreme Court of the United States had denied a petition for certiorari from the decision of the Circuit Court of Appeals rendered on June 26, 1935, he was paid the sum stated in said petition as and for his said retainer in said *Root* case and pending matters for a period of approximately three and one-half years. Prior to such payment the amount thereof was submitted by Uni-
191 versal to its two general counsel and received their approval before it was made. Both of these men are eminent members of the New York Bar and neither of them were attorneys of record in the above entitled cause (although one of them had taken an active part therein).

Thereafter Mr. Kaufman was consulted in the matter of the institution of certain suits proposed to be brought by Universal on the patents in suit in the above entitled cause against two of its largest infringers, both subsidiaries of Cities Service Company, and he acted as local attorney in one of said suits—against Crew-Levick Company—in the Eastern District of Pennsylvania, and was and has continued to be the attorney of record for Universal in such suit.

192 Universal and none of its officers or attorneys ever intended, thought, expected or believed, nor does it or they now believe, that he would do, or ever did, anything to improperly or illegally affect the judgment, opinion or action of any judge before whom the above entitled cases were pending, or any other case that might be instituted at any time. Universal and none of its officers or attorneys ever intended, thought, expected or believed, nor does it or they now believe, that any part of any moneys paid by Universal to Mr. Kaufman would be or was, either directly or indirectly paid to anyone for the purpose of influencing opinion or

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action of any such judge. Universal and none of its officers or attorneys ever knew or had any intimation, until after the investigation conducted by the Department of Justice of the United States which led up to the indictment referred to in the petition, that Mr. Kaufman had made or contemplated making or was in any way interested in making a loan to Charles L. Stokley or any other person at the instigation of Judge DAVIS or anyone else, or had or intended to have any business or other dealings with any Judge before whom the above entitled cases might come, which would in any way affect the judgment of the latter. Universal unqualifiedly refutes the suggestion or implication that Mr. Kaufman was retained for any improper purpose.

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VI. The inferences and insinuations contained in the last two sentences of paragraph VIII and the last sentence of paragraph IX of said petition are wholly unjustified and are absolutely untrue, as the following facts and circumstances demonstrate.

(a) These inferences and insinuations are based largely, if not wholly, upon the said Stokley loan, about which Universal, as already stated, neither knew nor had any intimation of until after the investigation above referred to.

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Petitioners have omitted to refer to some other evidence which Universal is advised was adduced on the trial of said indictment and which, it is submitted, destroys the inference (if, indeed, any may be drawn, which Universal denies) which said petition seeks to draw that the said Stokley loan influenced the decision of Judge DAVIS in the *Root* case. Such testimony showed that at the time the agreement with the said Stokley was made, Mr. Kaufman was attorney in three cases pending in the Circuit Court of Appeals to which

Universal was in no way related. For the convenience of the Court extracts from such testimony are set forth in an appendix.

Moreover, the Judge who presided at the trial of said indictment charged the jury in regard to said loan as follows:

> "The Jury has heard certain testimony in regard to a loan made by the defendant Kaufman to Stokley, a relative of Judge Davis, which was negotiated in
197 part at least by Judge Davis and secured by mortgage on certain Florida real estate. In so far as the evidence discloses this was a bona fide loan made upon ample security and such testimony was admitted in evidence only for the purpose of showing the association of the defendants on trial, and the jury must consider such evidence only in that connection."

(b) Universal is reliably informed that, contrary to the allegations of the said last sentence of paragraph IX of said petition, Mr. Kaufman, entirely apart from any compensation received from Universal, had ample funds with
198 which to make the said Stokley loan.

(c) Universal directs attention to some other circumstances, all of which were known to petitioners before the said petition was filed, and which, it is submitted, refute the said inferences and insinuations. The Root Company was using an apparatus for cracking oil to make gasoline, supplied by the Winkler Koch Engineering Company of Wichita, Kansas. Similar apparatus of said Winkler Koch Company had been supplied to and was being used by other refiners. It was known that the use of such apparatus was asserted to infringe patents of Universal, notably the Dubbs patent

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and the Egloff patent referred to in the petition.* The *Root* cases were based on the infringement of these patents. These users thereupon banded together to defend patent suits which might be brought against any of them for infringement of Universal's patents or those of any other patent owner. They formed an association which some of them termed the "Patent Club". The members of such association were those mentioned in Paragraph VI of the petition herein, plus the National Refining Company and the Root Refining Company. In the *Root* cases the more active attorneys for the 200
defendant were the petitioners. Over $275,000 was expended in the defense of the *Root* cases, which amount was supplied by the members of the Patent Club.

Subsequent to the decision of the Circuit Court of Appeals and the denial of a certiorari by the Supreme Court in the *Root* cases, Universal consented at petitioners' request to try the next case involving the same patents against a member of the Patent Club located in the District of Kansas. This suit was against the National Refining Company. The case was set for trial during the latter part of April, 1937, and was settled a few days before the trial was scheduled to begin, the defendant paying for past infringement and 201
taking a license for the future. Universal then proceeded with the case which it had pending, as stated in the petition, against the Globe Oil and Refining Company (another member of the Patent Club) in the Northern District of Illinois. That suit came on for trial before Judge HOLLY and was tried at length and fully on the merits. The case

*The Dubbs patent expired in 1938, and the Egloff patent will expire in 1942. The Dubbs invention was a fundamental one and the patent a pioneer. The Egloff patent covered a later devised process which included the fundamental characteristics of the Dubbs patent.

202 is now awaiting decision. Universal prosecuted the last two mentioned cases in the mid-west notwithstanding that it then had pending in the District of Delaware a suit against the Skelly Oil Company (referred to in paragraph V of the petition), which company was the largest infringer of any member of said Patent Club, and which case it was then in a position to press and prosecute and to assert *res adjudicata* to the same extent as in the suits against the other members of the Patent Club. It also had pending at that time a case
203 in the District of Delaware for infringement of the said Dubbs patent against the Empire Refining Company, and in the Eastern District of Pennsylvania a case against the Crew-Levick Company. Both of these companies are subsidiaries of the Cities Service Company and are not members of said Patent Club. These two latter companies were among the largest infringers of said Dubbs and other Universal patents. Universal was in a position to prosecute both of these suits in preference to those which it did press for trial as aforesaid in the District of Kansas and actually try in the Northern District of Illinois. Thus Universal twice placed the patents which were adjudicated in the *Root*
204 cases in jeopardy in two western districts (each in a separate circuit), when it had at hand the opportunity to press to final conclusion the said suits in the Third Circuit, which would have been its natural course had the inferences and insinuations of petitioners above referred to any foundation in fact whatever.

In addition, twice *after* the *Root* cases had been decided by the Circuit Court of Appeals, Universal *consented* to, when it could have *opposed*, orders being made by the Circuit Court of Appeals permitting applications to be made by the petitioners on behalf of the Root Company to apply to the District Court for leave to open the decrees in those cases.

Answer of Universal Oil Products Company to Petition and Brief of Arthur C. Denison, J. Bernhard Thiess and Thorley Von Holst as Amici Curiae.

The first of these applications was for permission to present a claim that the *Root* cases had abated prior to the trial and that the decree therein and all subsequent proceedings were null and void. The second application was for permission to assert in such suits a new defense of prior inventorship on the part of one Behimer.* Universal, of course, could have opposed both of said motions in the Circuit Court of Appeals in the first instance and the Root Company would have been under an obligation to satisfy that Court that each application had sufficient merit to justify its being granted. If petitioners' said inferences and insinuation were warranted, it is wholly unreasonable to assume that Universal would have *consented* to the making of the said orders without a contest rather than have insisted upon having the sufficiency of the applications determined by the Circuit Court of Appeals.

(d) The compensation paid to Mr. Kaufman was made by a regular check of Universal, was entered on the records of the company and reference made therein to the fact that it was in connection with the *Root* cases, and pending matters.

VII. The prayers of the petition will now be discussed.

(a) While, as stated on the oral argument, Universal does not feel that it is within its province to take any position with respect to an investigation by this Court to de-

*This defense was asserted and vigorously contested in the *Globe* case. It could have been raised in the *Root* cases on the Dubbs patent, because patents setting forth the Behimer process and having filing dates preceding Dubbs's date were offered in evidence in the *Root* cases. The record in those cases also contained the interference proceedings between Dubbs and Behimer which gave the dates for conception and reduction to practice for each, respectively.

termine for its *own* purposes whether or not any fraud has been perpetrated upon it, Universal does feel that it should point out to the Court that the petition, except in respect to the inferences and insinuations which have been previously discussed, is devoid of any facts which would justify the belief or the making of a charge that Universal has been a party to any such plan or intent as petitioners "infer" in the last sentence of paragraph IX or had any knowledge or intimation thereof.

(b) Should this Court determine to make an investigation for its own purposes, Universal does not feel that it would be just or fair to commit any investigation to these petitioners or that they be permitted to be a party to the same. They represent defendants in suits brought by Universal and frankly assert that they seek the aid of this Court in the hope that they can obtain information which may possibly enable them to defeat Universal in those cases on the ground that Universal has been guilty of unclean hands. To permit the petitioners to be clothed with the inquisitorial powers of this Court to serve the ends of their clients in other cases would be contrary to the settled policy of the Supreme Court, for the alleged investigation would become what Mr. Justice HOLMES characterized in *Ellis* v. *Interstate Commerce Comm.*, 237 U. S. 434, 445, as "a fishing expedition * * * for the chance that something discreditable might turn up."

Such an "undertaking" was said in *Jones* v. *Securities Exchange Commission*, 297 U. S. at 26, to be one "which uniformly has met with judicial condemnation." For this proposition a number of cases are cited, all of which deal with public officials or governmental bodies who are acting or purporting to act for the public welfare. The rule, of course, should apply with more rigor to individuals seeking to be clothed with official power, in furtherance of their own

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private ends. There is, of course, a proper and familiar procedure open to petitioners on behalf of those defendants which they represent in the particular cases to which they are parties, for asserting the alleged defense of unclean hands.

(c) Universal is advised by counsel that to grant the first prayer of the petition to counsel for private litigants to serve the interests of their clients would be unjustified either as a matter of law or public policy.*

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X. At the oral argument in this matter, counsel for Universal offered to consent to the recall of the mandate of this Court in the *Root* cases to enable the Court to reconsider the cases and to waive or in any other manner overcome any technical considerations which might stand in the way of such reconsideration. This offer Universal now repeats.

Respectfully submitted,

UNIVERSAL OIL PRODUCTS COMPANY

by H. J. HALLE
President

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THOMAS G. HAIGHT
HUGH M. MORRIS
WILLIAM F. HALE
CHARLES M. THOMAS
Counsel

[Verified by H. J. Halle, July 9, 1941.]

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*The authorities cited in the brief annexed to the petition in reference to removing the privacy of Grand Jury proceedings have no applicability to a case where a private litigant seeks access to them for private purposes. They relate only to cases where the Government needs in the public interest the testimony taken before a Grand Jury, or justice to one who claims that he has been indicted improperly requires that the seal of secrecy be broken (*U. S.* v. *Farrington*, 5 Fed. 343, where an attorney representing creditors presented the cases *sub judice* to the Grand Jury, etc.).

214 *Answer of Universal Oil Products Company to Petition and Brief of Arthur C. Denison, J. Bernhard Thiess and Thorley Von Holst as Amici Curiae.*

APPENDIX.

On page 1465 of the Transcript, Mr. Kaufman testified on cross examination as follows:

"Q. And just about that time" (when Kaufman agreed to make the Stokley loan) "you had a case coming on before Judge Davis, did you not, sir the Wiener case?

215 "A. Did I have a case? I had several cases there.

"Q. You had the Wiener case coming on before Judge Davis, did you not?

"A. I had the Wiener case there, yes, sir. I was an associate."

And on page 1471 of the Record, Mr. Kaufman, still on cross examination, testified as follows:

"Q. Was this case—Wiener case—pending when the Stokley loans were made?

"A. It was.

"The Court: Now ask him about the other cases, if there are any.

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"*By Mr. Gahagan.*

"Q. And the Kelly-Springfield Tire case v. United States—, was that pending when the Stokley loan was made, sir? (Hands paper to witness).

"A. No, I do not think that was. The argument was held on April 4, 1935.

"Q. When the decision come down, sir?

"Mr. Gray: Wait a minute.

"The Witness: The decision came down——

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"Mr. Gray: Just a moment. I understood your Honor to rule that he could not go into those things.

"The Court: Well he has answered no to the question.

"Mr. Gray: I see; I get your Honor's thought.

"Mr. Gahagan: Then I have got the right to show it was?

"The Court: Nobody denies that you have, Mr. Gahagan.

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"*By Mr. Gahagan.*

"Q. Fine—when did the decision come down?

"A. The decision came down November 7th.

"Q. What year, sir?

"A. 1935."

And on page 1476 of the Record, Mr. Kaufman further testified on cross examination as follows:

"*By Mr. Gahagan.*

"Q. Mr. Kaufman was another case, Ballwood & Company v. Commissioner of Internal Revenue, also pending at or about the time of the Stokley transaction,—sir,—the reargument in that case, I direct your attention to (pointing to sheet)? 219

"Mr. Gainsburg: Ask a question, sir.

"Mr. Gahagan: There is a question pending.

"(To the Witness) Thirty-six—thirty-two—thirty-five——

"The Witness: What was the question? (Previous question read by the reporter.)

"By Mr. Gahagan: Isn't that right, sir? Wasn't that case pending?

"A. Just a minute; let me look at this, will you? If you will take your hand away I will be able to look at it. Yes, and——

"Mr. Gainsburg: Just answer.

"By Mr. Gainsburg.

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"Q. Was it pending? That is the only thing I want.

"A. Just a minute; let me look at this again. It was pending, yes, in 1936.

"Q. All right, sir; that is all—and it was pending in 1935, was it not?

"A. Before I got into it—it pended in 1934—the case was decided by Judge Thompson, I think."

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ANSWER OF UNIVERSAL OIL PRODUCTS COMPANY TO THE PETITION OF ARTHUR G. LOGAN AS *AMICUS CURIAE*.

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To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The answer of Universal Oil Products Company, plaintiff-appellee in the above entitled case, hereinafter referred to as Universal, to the petition of Arthur G. Logan as *amicus curiae*, respectfully shows:

I. The said petition sets forth that the petitioner has read the petition and brief of Arthur C. Denison, *et al.* filed herein and "incorporates the same herein by reference and adopts the allegations, prayers and arguments contained therein". It also "joins in the prayers set forth in said petition" and prays that "the information and evidence referred to" in said petition of Arthur C. Denison, *et al.* be made available to petitioner. Universal therefore asks that its answer to the said petition and brief of Arthur C. Denison, *et al.*, together with Paragraph II hereof, be considered as an answer to the said petition of the said Arthur G. Logan.

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II. The remaining allegations of the petition have to do with a supposed claim for damages which the Eastern States Petroleum Company, Inc., hereinafter called Eastern States, according to said petition, may have against Universal. It is deemed unnecessary to reply to such allegations further than to state that the cracking unit erected by Eastern States embodied a number of Universal patents other than the Dubbs and Egloff patents, and the license acquired covered all of Universal's patents; that Eastern States never paid any royalties to Universal; that in the said suit in the Court of Chancery in the State of Delaware, Eastern States was defeated in every stage of said proceedings, including a decision by the Master to whom certain

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of the issues in said suit had been referred; that Eastern States was not led to enter into the license agreement through any false representations by Universal, but, on the contrary, shortly after the execution of the license agreement Eastern States through its President represented to Universal that it had entered into said agreement without regard to the value of the Universal patents, but to secure the benefits which it felt it could derive from its association with Universal; and that said settlement was made only after said report of the said Master.

Respectfully submitted,

UNIVERSAL OIL PRODUCTS COMPANY
by H. J. HALLE
President

THOMAS G. HAIGHT
HUGH M. MORRIS
WILLIAM F. HALL
CHARLES M. THOMAS
Counsel

REPLY MEMORANDUM OF ARTHUR C. DENISON, J. BERNHARD THIESS, AND THORLEY VON HOLST AS *AMICI CURIAE* ON THE FILING OF THE RESPONDENT'S ANSWER TO THE PETITION

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

While the Answer of Universal Oil Products Company, subscribed by its President, H. J. Halle, presents no new fact issue requiring further pleading, we deem it appropriate to address the Court on what seem to us to be the further reasons presented by the Answer requiring the investigation prayed for in the Petition.

The Answer does not either oppose or invite an investigation by this Court for its own purposes as to whether or not there was any fraud or misconduct in the matter of the Root decrees, but it represents to the Court that in any investigation to be conducted, your Petitioners should be excluded on the ground that their interest herein is to conduct a "fishing expedition" for the interests of clients whom they represent in other litigation brought by Universal on the Dubbs and Egloff patents.

The precise form of any investigation is, of course, entirely within the direction of this Court and we have never urged any other position. However, the suggestion that your Petitioners, as among those most conversant with the facts surrounding this patent litigation, should be thus excluded from any inquiry is decidedly fallacious. The term "fishing expedition" has been used in the decisions to characterize an inquiry for which the "fisher" has no substantial basis, and in the mere hope that something may be discovered useful in the pending controversy or some other. The issue here is whether fraud or misconduct occurred in the rendering of the Root decrees on appeal. Those interested in a decision of this issue are this Court, the public at large, and those members of the public whose particular legal rights

232 *Reply Memorandum of Arthur C. Denison, J. Bernhard Thiess, and Thorley Von Holst as Amici Curiae on the Filing of the Respondent's Answer to the Petition*

have been adversely affected and perhaps irreparably damaged if fraud occurred. There is here no divergency of interest; the interests of all are identical. That there is reasonable cause for the investigation, and a reasonable expectation that it will develop relevant facts, is hardly to be doubted.

At the top of page 2, (R. 61) the Answer says that *res adjudicata* will not be an issue "on any appeal from Judge Holly's decision." Presumably, this statement is made as a
233 reason for lack of urgency in the proposed investigation. If so, it is immaterial and, in any event, the fact remains that Universal has not eliminated this issue, either in the *Globe* or in any other case, by formal amendment or waiver. Even if they should, it could not purge the corruption if it existed.

The significant fact presented by the Answer is the entire absence of any factual allegations in explanation of the peculiar circumstances surrounding the employment by Universal of Morgan S. Kaufman. The Answer states that he was retained in 1932 by the then general patent attorney of Universal, whose name is not given, but who H. J. Halle has stated to have been one Frank L. Belknap of Chicago who
234 died in that year,* and so, unfortunately can never tell us what reasons induced Kaufman's selection. Apparently no money was paid to Kaufman when he is said to have been retained, contrary to what is customary in the ordinary case of a retainer. The Answer says that he was hired to be available for service in the *Root* cases and all cases then pending or subsequently brought and to disenable him from representing antagonistic parties. What did Universal know about Kaufman that required that he be "disenabled" from retainer by others? The *Root* cases were pending in

*This appears from Halle's testimony set forth in the Reply Memorandum of Arthur G. Logan.

Reply Memorandum of Arthur C. Denison, J. Bernhard Thiess, and Thorley Von Holst as Amici Curiae on the Filing of the Respondent's Answer to the Petition

the District of Delaware in which Kaufman was never a resident. Why select Kaufman, out of thousands of famous and able Pennsylvania lawyers, as the one to be secretly "disenabled" from adverse retainer? 235

The averment of the Petition that Kaufman rendered *no* services in the *Root* cases is not squarely met, for the Answer merely states evasively that Kaufman's services were not "utilized to any substantial extent prior to the latter part of the year 1935." Nothing is said in the Answer as to what the inferred *insubstantial* services consisted of nor what they were worth. Could they have been worth twenty-five thousand dollars? It is not alleged that Kaufman ever consulted with any of the attorneys of record in the *Root* cases, nor that he read the record, nor that he collaborated in the Briefs. 236

The Answer admits that Kaufman was paid $25,000 in October, 1935, after the denial of Petitions for Certiorari, and says that this very substantial payment, after the lapse of three and a half years, was "as and for his said retainer in said *Root* case and pending matters for a period of approximately three and one-half years." There is no elucidation of what the other "pending matters" might have been. Clearly, they were not the Cities Service suits, for the Bill against the Cities Service subsidiary, namely, the Crew-Levick Company, in the Eastern District of Pennsylvania, referred to in the Answer (R. 64), was not filed until January, 1936, as appears from the records of the District Court. 237

The inference is plain that there were no other matters for which Kaufman was retained and that his payment was entirely in connection with the *Root* cases, as will probably appear from the written records of Universal Oil Products Company, when they shall be produced.

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The Answer states that Kaufman's payment was a retainer fee. We venture to suggest that this is the first instance in the Court's experience of a "retainer fee" being paid three and a half years after the alleged fact of retainer. Obviously, the payment was not a retainer, but was for services which the Answer refuses to explain or elucidate. A grave doubt is raised by the Answer as to the truth of Universal's allegation that Kaufman was retained at all in 1932, or at any time prior to 1935. If he was retained in
239 1932 to "disenable" him from adverse representation, why was he not then paid the customary retainer fee? It is most extraordinary that any lawyer would agree, without any advance payment whatsoever, to hold himself for three and a half years in readiness to perform future services.

The Answer states that the amount of the payment to Kaufman was submitted to Universal's two general counsel, both of whom are "eminent members of the New York Bar" and that "neither of them were attorneys of record" in the *Root* cases. Here, again, is an unusual circumstance. The names of these "eminent" lawyers are not given, nor is it explained why their approval of the amount was necessary, nor why the bill should not have been submitted to chief
240 counsel of record in the *Root* cases. When their identity is disclosed it will be interesting to learn how much information was given to them about Kaufman's employment and services.

There is no explanation in the Answer as to why Kaufman was *secretly* employed in the *Root* cases. His employment was of record in the *Crew-Levick* case, filed in January, 1936. It is also of record in the three cases referred to in the Appendix to Universal's Answer, namely, *Kelly-Springfield Tire Co.* v. *United States*, 81 F. (2d) 533, *Ballwood Co.* v. *Commissioner of Internal Revenue*, 84 F. (2d)

733, and *Hill* v. *United States, ex rel Weiner*, 84 F. (2d) 27. It is not alleged in the Answer that any one of the attorneys of record in the *Root* cases (except the deceased Mr. Belknap) even knew of Kaufman's supposed retainer therein. Lack of such knowledge was specifically alleged on information and belief in the Petition *Amicus Curiae* of Arthur G. Logan, and Universal's Answer thereto, by failing to deny the allegation, admits it. 241

The Answer denies the allegation of the Petition that Kaufman's "retainer" ended at about the time the *Root* cases were decided in the Court of Appeals, and states, (R. 63) that he was continued under such retainer until 1938. This is inconsistent with the next paragraph on the same page which states that Kaufman "was and has continued to be the attorney of record for Universal" in the *Crew-Levick* case. If, by these statements, it is meant that Kaufman's retainer in the *Root* cases continued until 1938, then it is inconsistent with Kaufman's own testimony in the trial of the indictment, reproduced in our Petition (R. 40) wherein Kaufman clearly said that his retainer was for three and a half years beginning in 1932, which would end it in 1935. From 1935 to 1938, the *Root* cases were pending on the accounting. Apparently, however, Kaufman did not render any services in this connection for none are mentioned in the Answer and Kaufman himself negatived any such idea. 242 243

The denial in the Answer (R. 64-5) of guilty knowledge by Universal is merely general, and is further weakened by the fact that H. J. Halle's verification of the Answer is on information and belief, even as to matters of fact. Nor, in any event, could Universal escape responsibility for fraud perpetrated by its agent and attorney. Under the present circumstances, a general denial of guilt is meaningless when unaccompanied by facts showing innocence.

214 *Reply Memorandum of Arthur C. Denison, J. Bernhard Thiess, and Thorley Von Holst as Amici Curiae on the Filing of the Respondent's Answer to the Petition*

At the top of page 6, (R. 65-6) the Answer refers to the fact that during 1935 Kaufman was attorney in three other cases in the Court of Appeals, in which cases Universal was not in any way related. The suggestion here seems to be that if Kaufman made the Stokley loan to improperly influence the Judge of the Circuit Court of Appeals in other cases besides that of *Universal* v. *Root*, this in some way dilutes the effect of the Stokley loan in the *Root* cases. We fail to see how the situation would be any different if Judge Davis
245 were improperly influenced by Kaufman in all his cases pending on appeal in 1935, or only in the *Root* cases.

On page 6 of the Answer, (R. 66) Universal denies on information and belief that Kaufman had insufficient funds to make the Stokley loan without Universal's check for $25,000. In the trial of the indictment, we infer from questions put by the United States attorney that the government had in its possession proof that would have shown, had it been admitted, that Universal's information as stated in Paragraph 6 (b) is incorrect.

Beginning with Paragraph 6 (c) on page 6, and including the balance of that subparagraph, (R. 66-9) Universal's An-
246 swer, besides referring to irrelevant matters, advances the theory that the suggestion of fraud in the *Root* cases is negatived by the fact that Universal subsequently pressed for trial on the Dubbs and Egloff patents in other circuits. We fail to follow the reasoning. Of course, Universal desired, and doubtless deemed it essential, to proceed against defendants who resided outside the Third Circuit and there is nothing in this fact which, in any way, bears upon the question of whether or not in the first case which it brought to trial, and in which it succeeded, there was a miscarriage of justice, thereby enabling Universal to go after defendants in other circuits with the enormous advantage of an adjudication in its favor.

Reply Memorandum of Arthur C. Denison, J. Bernhard Thiess, and Thorley Von Holst as Amici Curiae on the Filing of the Respondent's Answer to the Petition 247

In summation of the Answer, we suggest that it wholly fails to show any lucid or even understandable explanation of the matters alleged in the Petition. The circumstances surrounding the *Root* decrees still remain suspect in spite of the fact that in filing its Answer, Universal had the fullest opportunity to set forth in detail facts and circumstances, if any there were, which, if true, would completely explain any irregularity or imputation of fraud in connection with the retainer of Kaufman by Universal and the fact of the Stokley loan. 248

We respectfully submit that Universal's Answer supplies an additional, and most cogent, reason for the granting of the prayers of the Petition that a full investigation be made.

Respectfully submitted,

ARTHUR C. DENISON,
J. BERNHARD THIESS,
THORLEY VON HOLST,
As Amici Curiae.

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Reply Memorandum of Arthur G. Logan as Amicus Curiae

To the Honorable Judges of the United States Circuit Court of Appeals:

1. The undersigned, Arthur G. Logan, heretofore filed a petition herein as Amicus Curiae and incorporated therein by reference and adopted the allegations, prayers and arguments of the Petition and Brief theretofore filed herein by Arthur C. Dennison, J. Bernhard Thiess and Thorley Von Holst. Universal Oil Products Company filed an answer to the Petition and Brief of said Arthur C. Dennison, J. Bern-
251 hard Thiess and Thorley Von Holst which will be referred to hereinafter as Universal's 1st Answer. Universal has also filed an answer herein to the petition of Arthur G. Logan as Amicus Curiae, which will be referred to hereinafter as Universal's 2nd Answer. Said Universal incorporated by reference in its said 2nd Answer the allegations contained in its said 1st Answer.

2. Since the filing of the petition herein by the undersigned, he took the testimony by deposition of Hiram J. Halle, President of Universal, in a case pending in the Superior Court of the State of Delaware, in and for New
252 Castle County, entitled "Universal Oil Products Company vs. The Vickers Petroleum Company of Delaware." In said suit Universal is suing on a license agreement for royalties. The Vickers Petroleum Company of Delaware, hereinafter referred to as "Vickers," filed a plea asserting that it had not used any of Universal's patents after the expiration of the Dubbs '629 patent on October 4, 1938. Universal has taken the position that Vickers is and has been since said date using certain other of Universal's patents, including the Egloff '593 patent. It is the position of Vickers that if the decision of this Court in the Root case, #5546, which holds that the Egloff '593 patent is valid, was obtained by

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corruption, then Universal should not be allowed to assert a claim for royalties based on the use thereof by Vickers, and furthermore, that if the decision of this Court in the Root case, #5548, which holds that the Dubbs '629 patent is valid, was obtained by corruption, Universal should not be allowed to assert a claim for royalties against Vickers for the use by Vickers of the Dubbs '629 patent prior to the date of its expiration. The said Hiram J. Halle testified when his deposition was taken as follows:

"Q. The Root case also established, or at least the court held in the Root case that these two patents were valid, is not that right?

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A. The record will show. That is my understanding.

Q. Who were the attorneys of record for Universal in the Root case?

MR. GILPATRIC: You can state if you know.

A. I cannot tell you from memory. Judge Haight, Judge Hall of Washington, Mr. Thomas of Washington, Mr. Belknap, Mr. Wrightman.

Q. And Judge Morris, was he not?

A. And Judge Morris, yes.

Q. Mr. Halle, was Morgan S. Kaufman attorney for Universal in that case?

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MR. GILPATRIC: Mr. Commissioner, I would like to have a five minute recess, if I may.

(Half hour's recess.)

(Question read by the reporter.)

Q. I will rephrase the question. Was Morgan S. Kaufman of Scranton, Pennsylvania, retained by Universal in the Root case?

MR. GILPATRIC: I object to the question on the ground that it has no relevancy to the issues in this case.

256 THE COMMISSIONER: I overrule the objection and direct the witness to answer.

Exception taken by Mr. Gilpatric.

A. He was one of the attorneys retained.

Q. He was not attorney of record, was he?

A. I think not; the record does not show his name.

Q. Was he paid a fee for acting in the case?

MR. GILPATRIC: The same objection.

257 THE COMMISSIONER: Same ruling.

A. Yes.

Q. How much?

MR. GILPATRIC: The same objection.

THE COMMISSIONER: Objection overruled.

Exception taken by Mr. Gilpatric.

A. $25,000 over the period of three to three and a half years.

Q. Will you give me the dates of the payments?

A. His services started in 1932 and he was paid in October, 1935.

258 Q. When was he paid?

A. In October, 1935.

Q. Was he paid the full $25,000?

A. The full $25,000. He had received nothing up to that time, and he had been retained in 1932 and served over that period.

Q. I understood a moment ago you said he had been paid from time to time. You mean the only payment was made in 1935?

A. I do not think I said anywhere that he was paid from time to time.

Q. I misunderstood you then.

A. I do not think your record shows that.

Q. The fact is that the full payment of $25,000 for his services in the Root case was made in October, 1935?

259 A. Yes, for his services from 1932 to the date of his payment.

MR. GILPATRIC: I think the record should show that that payment, so I am informed, was for services which included all the services in the Root case, and was not limited exclusively to services in the Root case.

MR. LOGAN:

260 Q. Mr. Halle, what other services did he render during that period other than services in the Root case?

A. In other litigation.

Q. What other litigation?

A. Well, I cannot specifically tell you, excepting I know he was in connection with the Cities Service Company Crew Levick case and others, but he was to be available for any services that we wanted.

Q. Now, Mr. Halle, by the Cities Service Crew Levick case you mean the suit filed against the Crew Levick?

A. Yes.

Q. There was no separate suit filed against Cities Service?

A. That is right.

261 Q. You mean the case Universal filed in Philadelphia against Crew Levick?

A. Yes.

Q. I call your attention to the fact that that case was filed in 1936.

A. Then I am mistaken as to that particular case. I did not meddle with the relationships and workings between the attorneys. He was retained and available for whatever litigation they wanted to consult him about.

Q. Who employed him?

A. Frank Belknap in 1932.

Q. What work did he do in the Root case?

A. I cannot tell you. I do not direct the work of the attorneys.

262 Q. Who paid him?
A. Universal.
Q. Did you personally O.K. the payment?
A. I did, yes, and approved by the attorneys.
Q. What attorney approved the payment?

MR. GILPATRIC: I object to this as beyond the widest scope of relevancy here, and direct the witness not to answer further.

THE COMMISSIONER: I overrule the objection and
263 direct the witness to answer.

MR. LOGAN: Do you still refuse to answer?

MR. GILPATRIC: Yes, I direct the witness not to answer."

Due to the fact that the attorney for Universal, Mr. Gilpatric, directed Mr. Hall not to answer the question, "What attorney approved the payment?", the said Hiram J. Halle refused to answer the question and therefore the undersigned does not know what attorney approved the payment. In Universal's 1st Answer it stated that the payment was approved by two of Universal's general counsel, not attorneys of record. The undersigned is of the opinion that this Court
264 should consider this attitude of Universal in connection with the payment to Morgan S. Kaufman of $25,000.00. Why was Mr. Halle instructed not to give the name or names of the attorney or attorneys who approved the payment? Why didn't the counsel of record in the Root cases, for whose benefit Mr. Halle testified Morgan S. Kaufman was employed, (i.e., the employment was so that he should be available to them for consultation) approve the payment? They should have been the best qualified to judge the extent and value of the services. Was it because they didn't know that Kaufman had been employed? Probably so, because in the petition of the undersigned as Amicus Curiae he stated he believed that "None of said counsel of record knew of the employment of Morgan S. Kaufman by Universal Oil Prod-

ucts Company to act in the above-captioned causes." In its 2nd Answer Universal does not deny this averment. Rule 8(d) of the Rules of Civil Procedure provides that averments "are admitted when not denied in the responsive pleading." If that rule is applied, then we have a situation where Universal would have this Court believe that Morgan S. Kaufman was employed to be available as a consultant to the counsel of record in the Root cases and was paid therefor $25,000.00, even though the counsel of record, with whom he was to consult, never "knew of the employment." Furthermore, from the foregoing excerpts from the testimony of Halle it is obvious that the $25,000.00 was only paid for services in the Root cases. What services?

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3. In paragraph 4 of the petition of Arthur G. Logan as Amicus Curiae there are set forth certain uses which Universal made of the judgment rendered by this Court in the Root cases. These uses are not denied. Nor does Universal deny that through the uses it made of the judgment of this Court it was enabled to cause Eastern States to take a license agreement and agree to pay royalties and that it derived therefrom a substantial advantage in that in settlement Eastern States "surrendered a claim against an affiliate of Universal for a sum in excess of $2,000,000.00."

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The undersigned therefore respectfully submits that Universal's 2nd Answer admits substantial reasons for the granting of the prayers of the petitions heretofore filed herein that a full investigation be made and prays that steps be taken, if corruption is discovered, to undo, if possible, the harm which has been caused through the use Universal has made of the judgment of this Court.

Respectfully submitted,

ARTHUR G. LOGAN,
As Amicus Curiae.

July 24, 1941.

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ANSWER TO REPLY MEMORANDA OF *AMICI CURIAE*.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

It seems unnecessary to make an extended answer to the reply memoranda of the respective petitioners. There are, however, four matters of fact in respect to which the petitioners presume to find something to bolster the inferences and insinuations of their original petition.

269 1. It is said that the names of the general counsel of Universal who approved the payment to Mr. Kaufman are not given in Universal's Answer. Exactly what significance this has is not apparent. However that may be, they are Mr. Richard E. Dwight, who at that time was senior member of the firm of Hughes, Schurman & Dwight, and Mr. William D. Whitney, a member of the firm of Cravath, deGersdorff, Swaine & Wood. Prior to the approval of the payment they were fully informed of Mr. Kaufman's employment as set forth in Paragraph V of Universal's Answer, and that he had performed no substantial services between the date he was retained and the time his fee was paid.

270 Alleged astonishment is expressed that Mr. Kaufman did not receive a fee at the time that he was retained, and also that his fee was approved by general counsel of Universal rather than by trial counsel. We venture the thought that the vast majority of lawyers, where they are retained by substantial concerns, receive no retainer at the time of their employment, and frequently no fee until a case is concluded or is in an advanced stage. The fees of attorneys retained by Universal have never been approved by or even submitted to trial counsel of record herein during all the years of their employment.

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2. From the fact that a statement of a "belief" in Mr. Logan's petition was not specifically denied in the Answer to that petition, petitioners infer that the retainer of Mr. Kaufman was unknown to trial counsel. The counsel of record who were charged with the trial of the *Root* cases were advised in 1932, prior to the trial of those cases, by Mr. Frank L. Belknap, then the general patent attorney of the Company, that Mr. Kaufman had been retained, as set forth in said Paragraph V of Universal's Answer.

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3. In Mr. Logan's reply he quotes some testimony of Mr. Halle, President of Universal, which was taken by deposition on July 1, 1941, in an action at law which Universal has pending in the State Court of Delaware against The Vickers Petroleum Company, and because Mr. Gilpatric (of Cravath, deGersdorff, Swaine & Wood), who is representing Universal in that case, directed Mr. Halle not to give the name of the attorneys who had approved the payment to Mr. Kaufman, he asks why Mr. Halle was instructed not to answer. The reason is obvious. The question was utterly irrelevant to any issue in the *Vickers* case.

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4. The reply memorandum of Messrs. Denison, *et al.* states (R. 79) that the answer contains "no elucidation" of the "pending matters" other than the *Root* cases in connection with which the payment to Mr. Kaufman was made, and then proceeds to aver that they could not have been the *Cities Service* suits. They know that there were at least two other important cases of Universal pending in the District of Delaware at the time the fee was paid to Mr. Kaufman. Indeed they were counsel for the defendant in one, *i. e.*, that against the Skelly Oil Company in a suit on the Dubbs patent.

274 *Answer to Reply Memoranda of Amici Curiae*

In conclusion, although petitioners have filed their petitions as *amici curiae*, it is quite apparent that they have not acted in that capacity, even taking into account the permission granted by the Court to file their petitions as *amici curiae*. It is of course the usual function of an *amicus curiae* either voluntarily or on the invitation of the Court to instruct the Court on a matter of law concerning which the latter is doubtful, or of *facts*, a knowledge of which is necessary to a proper disposition of the case. It is not the function of an *amicus curiae* to take upon himself the *management* of the case.

275 It is apparent that petitioners have exceeded their proper function and, in the hope of gaining some advantage for clients whom they represent in other cases brought by Universal,* they have again presented in their reply memoranda only unjustified inferences, insinuations and assumptions as a basis for the prayers of their petitions. Accordingly, unless the Court desires an investigation for its own purposes, as pointed out in Paragraph VII-A of Universal's Answer, they should not be accorded the aid of this Court to assist them in raising the defense of unclean hands in the other cases mentioned above, but should be remitted to the

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276 *On July 24, 1941, Judge HOLLY rendered a decision in the *Globe* case holding the Dubbs patent valid but not infringed; the subsidiary Egloff patent invalid, and directing a decree dismissing the bill. The record in the *Globe* case was more voluminous and comprehensive than in the *Root* cases and included the *Behimer* prior inventorship defense and much more testimony on the point upon which Judge HOLLY's decision re non-infringement turned. Indeed in the letter which three of the *amici curiae* wrote to Judge HOLLY (referred to at the end of Paragraph II of the Answer herein) and in which they gave reasons for not accepting Universal's offer to have this Court reconsider the *Root* cases, they referred to the record in the *Root* cases as "insufficient".

regular and appropriate proceedings in the trial court in which such cases are pending.

Respectfully submitted,

UNIVERSAL OIL PRODUCTS COMPANY

By H. J. HALLE
President.

RICHARD E. DWIGHT,
THOMAS G. HAIGHT, 278
HUGH M. MORRIS,
*WILLIAM F. HALL,
CHARLES M. THOMAS,
Of Counsel.

*It has not been possible to secure the signature of Mr. William D. Whitney as he is now in England engaged in war work, where he has been since January of 1940.

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280 **Order.**

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

Nos. 5546 and 5648. October Term, 1940.

ROOT REFINING COMPANY,
Defendant-Appellant,

281 v.

UNIVERSAL OIL PRODUCTS COMPANY,
Plaintiff-Appellee.

Before BIGGS, MARIS, CLARK, JONES and GOODRICH,
Circuit Judges.

ORDER

AND NOW, November 26, 1941, upon petition of Arthur C. Denison, J. Bernhard Thiess, Thorley Von Holst and Arthur
282 G. Logan, as amici curiae, and after hearing and full consideration, IT IS ORDERED that Thomas Raeburn White, Esq., be and he hereby is appointed master, with authority to examine, investigate and to make and report to this court his findings and conclusions concerning the relationship and dealings, if any, between Universal Oil Products Company, the plaintiff-appellee above named, Morgan S. Kaufman, and former Circuit Judge J. Warren Davis, and any and all persons acting for or on behalf of any of them in connection with the above entitled causes and the entire subject matter of the prosecution and disposition of the said causes and in particular whether there was in connection therewith such

fraud, corruption, obstruction or distortion of justice as tainted and invalidated the judgments rendered by this court in the above entitled causes on June 26, 1935.

IT IS FURTHER ORDERED that the said master be and he hereby is authorized and directed to request the Department of Justice to make available to him as an officer of this court the records, documents and other evidence in the possession of such Department, whether developed by its Bureau of Investigation in its inquiries, or by the prosecuting attorneys of the Department in grand jury inquiries, or otherwise, bearing upon the matters hereby referred to him, and also 284
to request (if such request be necessary) the Attorney General of the United States or the United States District Courts in which the said grand jury proceedings in the Cities of New York and Philadelphia took place, to make available to him as an officer of this court a stenographic transcript of the said proceedings.

IT IS FURTHER ORDERED that the said master shall have power to issue subpoenas on the request of the parties interested in the above entitled causes, upon the request of the said amici curiae, or upon his own motion; that he shall have power to administer oaths and all the powers common 285
to masters in the courts of the United States; that he shall rule upon and, for the time being, determine (subject to the final action of this court) all questions of evidence and of procedure which may arise before him; that he shall examine witnesses himself or permit them to be examined and cross-examined by the parties interested in the said causes and by the said amici curiae within such reasonable limits as he in his discretion may impose; that he shall have power to issue subpoenas duces tecum; that he shall promptly report to this court for its action any matters which he may think proper for such report; that he may thus take evidence and proceed in any judicial district of the United States which

286 Order

he may think proper; and that he shall proceed to his final report with all convenient speed.

IT IS FURTHER ORDERED that the expenses of the said master and the compensation for his services, the amount of which shall be hereafter fixed by this court, shall be paid in the first instance by the said amici curiae and shall be ultimately taxed against the said amici curiae or the said Universal Oil Products Company as this court may direct. Pending his investigation and report the said master may require the said amici curiae to deposit with him a reasonable sum or sums as indemnity in respect of his expenses and
287 compensation.

BY THE COURT:

JOHN BIGGS JR.
Circuit Judge.

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NOV 26, 1941

WILLIAM P. ROWLAND, Clerk.

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Transcript of Hearing, December 11, 1941 289

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 5546 and 5648

October Term, 1940.

ROOT REFINING COMPANY,
Defendant-Appellant,

v. 290

UNIVERSAL OIL PRODUCTS COMPANY,
Plaintiff-Appellee.

First meeting held before Thomas Raeburn White, Esq., Master, at 1930 Land Title Building, Philadelphia, Pa., on Thursday, December 11, 1941, at 10:00 o'clock A. M.

Present:

THOMAS RAEBURN WHITE, Esq., Master.

ARTHUR C. DENISON, Esq. (Union Commerce Bldg., Cleveland, Ohio),

J. BERNHARD THIESS, Esq. (77 West Washington Street, 291
Chicago, Ill.),

THORLEY VON HOLST, Esq. (77 West Washington Street, Chicago, Ill.), and

ARTHUR G. LOGAN, Esq. (Continental American Bldg., Wilmington, Del.), amici curiae.

HUGH M. MORRIS, Esq. (3018 du Pont Building, Wilmington, Delaware); and

THOMAS G. HAIGHT, Esq., By Edward J. O'Mara, Esq. (15 Exchange Place, Jersey City, New Jersey), Representing the Universal Oil Products Company.

292 *Transcript of Hearing, December 11, 1941*

(A copy of the order appointing the Master follows:)

Before BIGGS, MARIS, CLARK, JONES and GOODRICH, Circuit Judges.

ORDER

AND NOW, November 26, 1941, upon petition of Arthur C. Denison, J. Bernhard Thiess, Thorley von Holst and Arthur G. Logan, as amici curiae, and after hearing and full consideration, IT IS ORDERED that Thomas Raeburn White, Esq., be and he hereby is ap-
293 pointed master, with authority to examine, investigate and to make and report to this court his findings and conclusions concerning the relationship and dealings, if any, between Universal Oil Products Company, the plaintiff-appellee above named, Morgan S. Kaufman and former Circuit Judge J. Warren Davis, and any and all persons acting for or on behalf of any of them in connection with the above entitled causes and the entire subject matter of the prosecution and disposition of the said causes and in particular whether there was in connection therewith such fraud, corruption, obstruction or distortion of justice as
294 tainted and invalidated the judgments rendered by this court in the above entitled causes on June 26, 1935.

IT IS FURTHER ORDERED that the said master be and he hereby is authorized and directed to request the Department of Justice to make available to him as an officer of this court the records, documents and other evidence in the possession of such Department, whether developed by its Bureau of Investigation in its inquiries, or by the prosecuting attorneys of the Department in grand jury inquiries, or otherwise, bearing upon the matters hereby referred to him, and

also to request (if such request be necessary) the Attorney General of the United States or the United States District Courts in which the said grand jury proceedings in the Cities of New York and Philadelphia took place, to make available to him as an officer of this court a stenographic transcript of the said proceedings.

IT IS FURTHER ORDERED that the said master shall have power to issue subpoenas on the request of the parties interested in the above entitled causes, upon the request of the said amici curiae, or upon his own 296
motion; that he shall have power to administer oaths and all the powers common to masters in the courts of the United States; that he shall rule upon and, for the time being, determine (subject to the final action of this court) all questions of evidence and of procedure which may arise before him; that he shall examine witnesses himself or permit them to be examined and cross examined by the parties interested in the said causes and by the said amici curiae within such reasonable limits as he in his discretion may impose; that he shall have power to issue subpoena duces tecum; that he shall promptly report to this court for its action any matters which he may think proper for 297
such report; that he may thus take evidence and proceed in any judicial district of the United States which he may think proper; and that he shall proceed to his final report with all convenient speed.

IT IS FURTHER ORDERED that the expenses of the said master and the compensation for his services, the amount of which shall be hereafter fixed by this court, shall be paid in the first instance by the said amici curiae and shall be ultimately taxed against the said amici curiae or the said Universal Oil Products Com-

pany as this court may direct. Pending his investigation and report the said master may require the said amici curiae to deposit with him a reasonable sum or sums as indemnity in respect of his expenses and compensation.

BY THE COURT:

JOHN BIGGS, JR.
Circuit Judge.

RECEIVED & FILED
Nov 26, 1941
William P. Rowland, Clerk.

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The Master: Judge Denison being requested by the Master to indicate the procedure which he had in mind, suggested that the Master should procure the papers which the order indicates should be made available to him, and that they should be open to the inspection of all counsel as amici curiae before the next step is taken.

Have you gentlemen anything to say about that?

Mr. O'Mara: Nothing excepting that it seems to me if they are made available for the inspection of amici curiae they should also be made available for the inspection of counsel for the Universal Oil Products Company.

Mr. von Holst: To which we agree.

300 Mr. Thiess: No objection on our part.

(Discussion off the record.)

The Master: It is suggested by Mr. von Holst that the papers to be obtained would consist of the records of the grand jury proceedings in New York and Philadelphia, the reports of the F. B. I. investigation, and the statements of witnesses taken by the office of the Attorney General in Washington.

Mr. von Holst: Mr. Gahagan is the one that probably has all these papers, and the request, I would suggest, would

be properly made upon him in the first instance, because he might have all the papers in one place.

The Master: What is his full name?

Mr. von Holst: Walter H. Gahagan.

The Master: Was he in charge of this matter?

Mr. von Holst: He was in charge of the indictment trials in Philadelphia.

The Master: Did he try the case?

Mr. von Holst: He tried the case for the Government.

(Adjourned to a date to be announced in the future.) 302

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Transcript of Hearing, April 16, 1942

October Term, 1940.

Second meeting held before Thomas Raeburn White, Esq., Master, at 1930 Land Title Building, Philadelphia, Pa., on Thursday, April 16, 1942, at 11:00 o'clock A. M.

Present:

THOMAS RAEBURN WHITE, Esq., Master.

J. BERNHARD THIESS, Esq. (77 West Washington Street, Chicago, Ill.),

305 THORLEY VON HOLST, Esq. (77 West Washington Street, Chicago, Ill.); and

SIDNEY NEUMAN, Esq., (77 West Washington Street, Chicago, Ill.),

amici curiae.

HUGH M. MORRIS, Esq. (3018 du Pont Building, Wilmington, Delaware),

EDWARD J. O'MARA, Esq. (15 Exchange Place, Jersey City, New Jersey),

RALPH S. HARRIS, Esq. (100 Broadway, New York City, N. Y.), and

FREDERICK W. P. LORENZEN, Esq. (100 Broadway, New

306 York City, N. Y.),

Representing the Universal Oil Products Company.

The Master: Pursuant to the arrangement made at the last meeting in this matter, I spent several days in New York going over records and testimony in the office of Walter H. Gahagan, Assistant United States Attorney in the Southern District of New York. I examined a great mass of pages and many exhibits.

As a result of my first interview with Mr. Gahagan, I produced certain exhibits and other documents for the examination of counsel on January 19, 1942, as shown in the

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Memorandum which was furnished to the counsel at the time, and which is as follows:

"IN RE ROOT REFINING COMPANY V. UNIVERSAL OIL PRODUCTS COMPANY

MEMORANDUM FOR COUNSEL IN REFERENCE TO PAPERS LOANED TO T. R. WHITE BY WALTER H. GAHAGAN, ASSTANT U. S. ATTORNEY, AND WHICH ARE NOW SUBMITTED TO COUNSEL FOR THEIR EXAMINATION

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Mr. Gahagan advises me that in his notes which he used in cross-examining Mr. Kaufman in the trial in the District Court is contained a transcript of all of the testimony given by Mr. Kaufman before the Grand Jury relating to the Universal Oil transactions. He further advises me that the statements taken by the F. B. I. would be of no value as all information which proved to be material is disclosed in the other documents submitted. He considers that most of the F. B. I. reports are of little or no value and they are apparently very voluminous.

Mr. Gahagan assured me, however, that if in going over the aforesaid documents counsel conclude 309 that other papers in his possession might be relevant, arrangements can be made to procure such other papers. My own opinion is, after going over them quite fully with Mr. Gahagan, and afterwards, that we have everything he has which would really throw any light on the questions at issue.

T. R. White

January 19, 1942.

LIST OF PAPERS LOANED TO MR. WHITE BY MR. GAHAGAN IN NEW YORK ON THURSDAY, JANUARY 15, 1942.

Notes of Mr. Gahagan for use in cross examining Mr. Kaufman re Universal Oil and Stokley transactions.

Folder containing grand jury testimony of Charles L. Stokley.

Grand jury testimony of W. M. Behrens (pages 56 to 94).

311 Folder containing grand jury testimony of Hiram J. Halle.

Statement of Judge Thomas G. Haight consisting of 7¼ pages.

The Public National Bank and Trust Company statement of Morgan S. Kaufman, first entry dated Oct. 31, '35, and last entry Nov. 30.

The Public National Bank and Trust Company statement of Morgan S. Kaufman, first entry dated Sept. 30, '35, and last entry Oct. 31.

Certified photostatic copy of the docket entries in the case of Root Refining Co., v. Universal Oil Products Co., (No. 5546), to June 1, 1941, being page 208.

312 Certified photostatic copy of the docket entries in the case of Root Refining Co., v. Universal Oil Products Co. (No. 5648), to June 1, 1941, being page 60.

Original copy of letter dated July 27, 1936, from Universal Oil Products Company to Mr. Morgan S. Kaufman.

Photostatic copy of Voucher No. 12005, dated 12/2/36; Universal Oil Products Co., to Morgan S. Kaufman, in the amount of $10,000.00.

Photostatic copy of Voucher No. 10095, dated Oct. 18, 1935, Universal Oil Products Co., to Morgan S. Kaufman, in the amount of $25,000.00.

Photostatic copy of Voucher No. 3120, dated 3/18/36, Universal Oil Products Co., to Morgan S. Kaufman, in the amount of $10,000.00.

Handwritten memo as follows: "Mr. Healy Mr. Morgan S. Kaufman, 9 East 46th St., New York City." (Photostatic copy)

Photostatic copy of memo dated Dec. 2, 1936, Mr. L. M. Healy, B. G. Lenske.

Photostatic copy of letter dated December 2, 1936; from Universal Oil Products Co., to Mr. Morgan S. Kaufman. 314

Photostatic copy of letter dated March 18, 1936, from Universal Oil Products Co., to Mr. Morgan S. Kaufman.

Photostatic copy of memo dated Mar. 17, 1936, Mr. W. M. Behrens, B. G. Lenske.

Photostatic copy of letter dated December 2, 1936, from Universal Oil Products Co., to Mr. Morgan S. Kaufman.

Photostatic copy of memo dated Dec. 2, 1936, Mr. L. M. Healy, B. G. Lenske.

Photostatic copy of letter dated March 18, 1936, from Universal Oil Products Co., to Mr. Morgan S. 315 Kaufman.

Photostatic copy of Voucher No. 7203, dated 7/27/36, Universal Oil Products Co., to Morgan S. Kaufman, in the amount of $5,000.00.

Photostatic copy of letter dated July 27, 1936, from Universal Oil Products Co., to Mr. Morgan S. Kaufman.

Photostatic copy of handwritten memo as follows: dated 3/18/36: "Morgan S. Kaufman $10,000. Mr. Healy telephoned me and said Mr. Halle ordered this

check for $10,000.00 to be mailed to Mr. Kaufman, 9 East 46th St., New York, tonight.

B. G. L."

Photostatic copy of memo dated July 27, 1936, Mr. W. M. Behrens, B. G. Lenske.

Photostatic copy of memo dated Dec. 2, 1936, to Accounting Department requesting voucher in favor of Mr. Morgan S. Kaufman, in the sum of $10,000.00. Photostatic copy of statement dated 1/2/36 as follows: "In full for services for the year 1936 and for retainer for 1937 as per telephone conversation Healy-New York at request of H. J. H. $10,000.00."

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Photostatic copy of letter dated July 29, 1936, from Morgan S. Kaufman to Universal Oil Products Co.

Photostatic copy of memo dated 3/18/36, to Accounting Department requesting voucher in favor of Morgan S. Kaufman in the sum of $10,000.00.

Photostatic copy of statement dated 3/18/36, as follows: "Retainer 1936 for services rendered and to be rendered in connection with our pending Litigation per phone conversation between L. M. Healy & B. G. Lenske 3/18/36 $10,000.00."

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Photostatic copy of inter office correspondence dated July 23, 1936, to B. G. Lenske from W. M. Behrens.

Photostatic copy of inter office correspondence dated December 4, 1936, to Mr. B. G. Lenske from L. M. Healy.

Photostatic copy of memo dated July 27, 1936, to Accounting Department requesting voucher in favor of Morgan S. Kaufman in the sum of $5,000.00.

Photostatic copy of statement dated 7/27/36, as follows: "To be applied against services rendered in

connection with General Legal Services per W. M. Behrens memo to B. G. Lenske dated July 23, 1936 $5,000.00".

Photostatic copy of handwritten memo stamped received Dec. 2, 1936, Accounting Department, as follows: "Healy—Check $10,000.00 Morgan S. Kaufman in full for serv. 1936 & ret. for 1937."

Photostatic copy of memo dated Oct. 18, 1935, to Accounting Department requesting voucher in favor of Morgan S. Kaufman in the sum of $25,000.00.

Photostatic copy of statement dated 10/18/35, as 320
follows: "Legal services to date in connection with the Root Case and pending matters per authority of Mr. Mitchell $25,000.00."

Photostatic copy of check No. 4317, dated October 18, 1935, to the order of Morgan S. Kaufman, $25,000.00, by Universal Oil Products Co.

Photostatic copy of check No. 4425, dated March 18, 1936, to the order of Morgan S. Kaufman, $10,000.00, by Universal Oil Products Co.

Photostatic copy of check No. 4597, dated December 2, 1936, to the order of Morgan S. Kaufman, $10,000.00, by Universal Oil Products Co.

Photostatic copy of check No. 4495, dated July 27, 321
1936, to the order of Morgan S. Kaufman, $5,000.00, by Universal Oil Products Co.

Photostatic copy of handwritten memo as follows: "N. Y. Oct. 22/35. Rec'd of Universal Oil Products Co., the sum of $25,000.00 in full for services to Oct. 1, 35. Morgan S. Kaufman."

Photostatic copy of letter dated July 8, 1935, from T. H. C., to Mr. C. L. Stokley.

Photostatic copy of letter dated July 23, 1935, from T. H. C., to Hon. J. Warren Davis, consisting of 3 pages.

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Photostatic copy of letter dated July 26, 1935, from J. Warren Davis to Thomas H. Cooley, Esq., consisting of two pages.

Photostatic copy of letter dated July 29, 1935, from T. H. C., to Mr. C. L. Stokley.

Photostatic copy of letter dated July 29, 1935, from T. H. C., to Hon. J. Warren Davis.

Photostatic copy of letter dated August 9, 1935, from J. Warren Davis to Thomas H. Cooley, Esq.

Photostatic copy of letter dated September 25,
323 1935, from T. H. C., to Judge J. Warren Davis.

Photostatic copy of telegram dated Oct. 3, 1935, from Thomas H. Cooley to Judge J. Warren Davis.

Photostatic copy of telegram dated Oct. 4, 1935, from J. Warren Davis to Thomas H. Cooley.

Photostatic copy of telegram dated Oct. 24, 1935, from Thomas H. Cooley to Judge J. Warren Davis.

Photostatic copy of telegram dated Nov. 6, 1935, from Thomas H. Cooley to Judge J. Warren Davis.

Photostatic copy of telegram dated Nov. 6, 1935, from J. Warren Davis to Thomas H. Cooley.

Photostatic copy of letter dated November 29,
324 1935, from T. H. C., to Mr. Charles L. Stokley.

Photostatic copy of agreement between Morgan S. Kaufman and Charles L. Stokley and Delta Stokley, dated the 25th day of November 1935, consisting of four pages.

Photostatic copy of letter dated March 10, 1936, from J. Warren Davis to Mr. Charles L. Stokley, consisting of two pages.

Two separate photostats being two pages of one letter in handwriting, apparently undated, from J. Warren Davis, to "Dear Charlie".

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Photostatic copy of check No. 207, dated November 14, 1935, to the order of, apparently, B. F. Ford, Atty (being somewhat illegible), $10,000.00, signed by Morgan S. Kaufman. (One photostat of the front of the check, and one of the back, both being attached to one sheet of white paper.)

Photostatic copy of check No. 109, dated May 15, 1939, to the order of Morgan S. Kaufman, $600.00, signed by C. L. Stokley. (one photostat of the front of the check, and one of the back, both being attached to one sheet of white paper.)

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The Master: Subsequently, pursuant to a request from counsel that certain further records should be examined and other material obtained, if possible, I paid a second visit to New York and secured the various documents and material mentioned in the second memorandum which was submitted to counsel on March 19, 1942, and which is as follows:

"Root Refining Company v. Universal Oil Products Co.

MEMORANDUM BY THE MASTER

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Pursuant to the request of counsel, I examined the available material in the office of the Assistant United States Attorney in New York which might throw any light upon the issues raised in the present investigation.

Among other things, I examined and secured the report of F. B. I. Investigator C. B. Winsted on his interview with Stokley, dated February 15, 1940, and also a later report relating generally to the same subject, dated March 5, 1940. These two reports are submitted for examination of counsel.

I also secured photostatic copies of certain records from the First National Bank of Miami, Florida, which bear generally on the same subject and which are herewith submitted.

I also secured a copy of voluminous statements made by Wilmer C. Stokley and his father, Charles Lee Stokley, taken in question and answer form in the United States Attorney's office in New York at various dates on and after February 29, 1940, which are submitted for the examination of counsel.

329 I also examined many other reports and statements to ascertain if anything was contained in any of them which might throw any additional light upon the questions now under investigation. In this connection, I examined statement of J. Warren Davis taken before the United States Attorney on July 3, 1940. In this statement there is no reference whatever to the Stokley loan or the oil cases, or to Kaufman's connection with them. The examination related largely to Davis' bank account and the $5,000 bills which figured in the prosecution.

I have also examined Judge Davis' statement taken before the same persons on September 9, 1940. This
330 statement contains no reference of any kind either to the Stokley loan or to the oil cases.

There are only two references in the statement which might possibly have some bearing on the instant investigation. In the course of Judge Davis' investigation, a letter was shown him from Root, Clark, Buckner & Ballantine, dated July 3, 1940, in which it was said were enclosed several sheets being a summary of cash deposited and withdrawn from safe deposit boxes by Judge and Mrs. Davis during the period from January 1, 1932, to January 1, 1940. Judge Davis

said the memorandum was substantially correct, and was cross-examined at some length concerning his financial transactions. A copy of that memorandum no doubt could be secured from Root, Clark, Buckner & Ballantine if thought material.

Many of the transactions about which Judge Davis was asked related to the period prior to 1935. The safe deposit box in which Judge and Mrs. Davis kept money appears to have been in the vaults of the Philadelphia Saving Fund Society.

There is also a statement by Marguerite G. Davis 332
(Judge Davis' wife) taken September 9, 1940, referring to the same matters, and more particularly to a loan which was made in 1936 to one David Lewis. So far as appears, this has no connection with the oil cases or with Mr. Kaufman. The loan in question appears to have been made from money in the safe deposit box in March of 1936, and was in the amount of $4300 or $4400. Mrs. Davis said the money had been repaid.

Mrs. Davis also corroborated the correctness of the memorandum above referred to of cash deposited and withdrawn from the safe deposit box. This examination related mainly to the $1000 bills which figured 333
in the trial of Judge Davis.

A memorandum which accompanied the above statements apparently made as a result of the investigation indicates that Judge and Mrs. Davis were insolvent from 1929 on, that they were continually borrowing money from friends and banks, and at the same time Judge Davis was making loans to others, particularly David Lewis.

Their indebtedness to banks which amounted to $157,000 was said to have been adjusted by cash pay-

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ments of $37,000 made by one Samuel Ungerleider, who was apparently a stock broker. It was stated in the memorandum that the money to make this settlement was loaned by Ungerleider, his explanation being that he did it out of friendship for Judge Davis.

This compromise settlement was made in May of 1937. There was also the surrender of collateral amounting to $57,000, so that the loss to the banks was approximately $61,000, according to the memorandum.

335 This memorandum states that the F. B. I. had attempted to reconcile the cash available to Judge Davis from all sources with the cash actually expended by him. The memorandum said that approximately $17,000 of cash was expended in excess of the cash available to Judge Davis so far as known, and that no explanation had been made. This reconciliation apparently related to the period 1936 to 1939, inclusive.

The memorandum also contains a section relating to the Stokley transaction. It describes the loan as shown in the papers which we have, and states that:

> "Judge Davis had continuously interested himself in attempting to settle Stokley's obligation
> 336 with the municipality which held the lien upon Stokley's property."

There is nothing new in the memorandum, except perhaps a statement that in 1936, within six months from the time the loan was made to Stokley by Kaufman, Judge Davis made a loan to Stokley by borrowing $4,000 from Ungerleider. This loan is said to have been repaid.

A search was made for the statements mentioned in counsel's letter to me of February 17, 1942, of J.

Warren Davis and Morgan S. Kaufman to the F. B. I. investigators. No such statements could be found, but as Judge Davis and Mr. Kaufman were fully examined before the Grand Jury in New York, it is doubtful whether such statements would contain anything new.

I read through in its entirety the testimony before the New York Grand Jury of Judge Davis and Mr. Kaufman, have made extracts of all matters which seem to me to be material to the present investigation, and these are now submitted for the examination of counsel. 338

No questions were asked Judge Davis about the Universal Oil case in this examination. In explanation of this, Mr. Gahagan said that the investigation they were then making related primarily to other matters and that as Kaufman's appearance had never been entered in the oil case, they preferred not to ask Judge Davis anything about it.

I also procured and submit herewith a summary report by the F. B. I. which may be of some interest.

T. R. White,
Master

March 19, 1942." 339

The Master: Counsel on both sides, as I understand it, have examined all this material to the extent which they care to do so at this time.

I may add that I have now procured a copy of the record of the Grand Jury sitting in Philadelphia which investigated the affairs of Judge Davis and Mr. Kaufman, but I have not yet had an opportunity to examine it. I have agreed with Judge Biggs that I would examine this record, and if I found anything in it material to the present inquiry it should be used in this proceeding. If I find nothing which

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seems to me to have a bearing on the issues presented in this investigation, I will return the record to the proper parties.

That brings us up to date, gentlemen.

Mr. Harris: May I suggest an amendment to your statement, wherein you said you made a second investigation at the request of counsel? It should appear that was at the request of counsel for the so-called amici curiae.

The Master: All right, put it that way, counsel for the amici curiae.

341 (Discussion off the record.)

The Master: Mr. Von Holst, for counsel designated as amici curiae, presented a request for the issuance of subpoenas, which is as follows:

"IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT

Nos. 5546 and 5648. October Term, 1940

ROOT REFINING COMPANY,

Defendant-Appellant,

342 v.

UNIVERSAL OIL PRODUCTS COMPANY,

Plaintiff-Appellee.

MEMORANDUM OF AMICI CURIAE, SUGGESTING CERTAIN WITNESSES TO BE CALLED AND CERTAIN SUBPOENAS TO BE ISSUED

To The Honorable Thomas Raeburn White, Special Master:

The undersigned, as *amici curiae*, respectfully suggest that subpoenas duces tecum be issued by the

Master, pursuant to the authority vested in him by the order of the Court of Appeals of November 26, 1941, commanding certain witnesses hereinafter named to appear before the Master in the order named, and on such dates and at such places as the Master may designate, and to testify in these proceedings, said subpoenas to incorporate the provisions, as to the production of documents, hereinafter set forth under the respective names of said witnesses:

I

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Universal Oil Products Company, a South Dakota Corporation, and Universal Oil Products Company, a Delaware Corporation, both of whose offices are located at Rockefeller Center, New York City, N. Y., and Hiram J. Halle, President, and W. M. Behrens, Secretary, of said corporations:

1. All memoranda, reports, correspondence, telegrams, diaries, writings and printings, of every nature, of whatsoever date—or copies thereof if the originals are not in your possession, and whether official or personal, referring or pertaining in any way to the employment by Universal Oil Products Company or 345 by its officers, attorneys, agents, or employes, of Morgan S. Kaufman and/or David Kaufman, as attorneys or agents or in any other capacity whatsoever.

2. All memoranda, reports, correspondence, telegrams, diaries, writings and printings of every nature of whatsoever date, and whether official or personal,—or copies thereof if the originals are not in your possession—with, concerning, referring or pertaining in any way to Morgan S. Kaufman and/or David Kaufman, whether by name or otherwise.

3. All contracts, agreements, documents, and all supplements thereof, writings and printings of every nature of whatsoever date—or copies thereof if the originals are not in your possession—made and entered into by and between Universal Oil Products Company, and Morgan S. Kaufman and/or David Kaufman, relative to employment, services, compensation or bonuses of or for the said Morgan S. Kaufman, the said David Kaufman, or both of them, or any appointee of both or either of them.

347 4. All records, data, books of account, ledgers, journals, books of entry, cancelled checks or vouchers, —or copies thereof if the originals are not in your possession—showing payments to or for the account of Morgan S. Kaufman, and/or David Kaufman, or any appointee of both or either of them, either as fees, gifts, bonuses, cancellations of indebtedness, or obligations, or present or future compensation of any nature made by Universal Oil Products Company, or any officer, agent, employe, or attorney thereof, at any time.

348 5. All memoranda, reports, correspondence, telegrams, diaries, writings and printings, of every nature, of whatsoever date, and whether official or personal, —or copies thereof if the originals are not in your possession—written or exchanged by and between Universal Oil Products Company or any officer, agent, employe, or attorney thereof on the one hand and Morgan S. Kaufman and/or David Kaufman or any associate or employe of Morgan S. Kaufman and/or David Kaufman on the other hand, pertaining to or referring in any way to:

(a) The cases entitled *Universal Oil Products Company* v. *Root Refining Company*, Equity Nos.

715 and 895, heretofore pending in the United States District Court for the District of Delaware, and in the United States Circuit Court of Appeals for the Third Circuit, Appeals Nos. 5546 and 5648.

(b) The case entitled *Universal Oil Products Company* v. *Crew-Levick Refining Company*, heretofore and now pending in the United States District Court of the Eastern District of Pennsylvania, Equity No. 9287.

(c) Any retainer of Morgan S. Kaufman and/or David Kaufman or of any associate or employe of the said Morgan S. Kaufman and/or David Kaufman for the State of Pennsylvania, or with respect to any other case or matter involving the Universal Oil Products Company. 350

II

Lee J. Gary—attorney for Universal Oil Products Company, whose address is First National Bank Building, Chicago, Illinois:

1. All memoranda, reports, correspondence, telegrams, diaries, docket sheets, books of account, journals, books of entry, writings and printings of every nature of whatsoever date, and whether official or personal,—or copies thereof if the originals are not in your possession—from the files, books, diaries or records of Frank L. Belknap or from your files, books, diaries, or records: 351

(a) Referring or pertaining in any way to the employment by Universal Oil Products Company, or by Frank L. Belknap, or by any other agent or attorney, of Morgan S. Kaufman and/or David Kaufman, as an attorney or agent, or in any other capacity whatsoever.

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(b) Showing or tending to show the itineraries, conferences, and sojourns away from Chicago, Illinois, of the said Frank L. Belknap, during the years 1932 and 1933.

2. All memoranda, reports, correspondence, telegrams, diaries, docket sheets, books of account, journals, books of entry, writings and printings of every nature of whatsoever date, and whether official or personal,—or copies thereof if the originals are not in your possession—from the books, records, diaries,
353 and files of Frank L. Belknap, or from your books, files, diaries and records, with, concerning, referring or pertaining in any way to Morgan S. Kaufman and/or David Kaufman.

3. All correspondence, telegrams, memoranda, documents, writings, and printings of every nature, of whatsoever date, and whether official or personal, —or copies thereof if the originals are not in your possession—written or exchanged by and between Frank L. Belknap or yourself or any associate or employe of Frank L. Belknap or yourself on the one hand and Morgan S. Kaufman and/or David Kaufman, or any associate or employe of the said Morgan
354 S. Kaufman and/or David Kaufman on the other hand, pertaining to or referring in any way to services, legal or otherwise, for or on behalf of Universal Oil Products Company, its agents or attorneys.

III

E. Ennalls Berl, attorney for Universal Oil Products Company, whose address is Delaware Trust Building, Wilmington, Delaware:

1. All records, books of account, ledgers, journals, diaries and books of entry showing payments to or

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for your account made by Universal Oil Products Company in connection with the following cases:

(a) The cases entitled *Universal Oil Products Company* v. *Root Refining Company*, Equity Nos. 716 and 895, heretofore pending in the United States District Court for the District of Delaware, and in the United States Court of Appeals for the Third Circuit, Nos. 5546 and 5648.

(b) The case entitled *Universal Oil Products Company* v. *Empire Refining Company*, Equity No. 1162, heretofore and now pending in the United States District Court for the District of Delaware.

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IV

Wm. F. Hall, Charles M. Thomas, and Hugh M. Morris, attorneys for Universal Oil Products Company, whose addresses are, respectively, Victor Building, Washington, D. C.; Shoreham Building, Washington, D. C., and Dupont Building, Wilmington, Delaware:

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1. All memoranda, reports, correspondence, telegrams, diaries, writings, and printings, of every nature, of whatsoever date, and whether official or personal,—or copies thereof if the originals are not in your possession:

(a) Referring or pertaining in any way to the employment by Universal Oil Products Company or by its officers, attorneys, agents, or employees, of Morgan S. Kaufman and/or David Kaufman, as attorneys or agents or in any other capacity whatsoever.

(b) With, concerning, referring or pertaining in any way to Morgan S. Kaufman and/or David Kaufman, whether by name or otherwise, or to payments for or on the account of both or either of them.

V

Richard E. Dwight, attorney for Universal Oil Products Company, whose address is 100 Broadway, New York, N. Y.:

359 1. All memoranda, reports, correspondence, telegrams, diaries, writings and printings, of every nature, or whatsoever date, and whether official or personal, or copies thereof if the originals are not in your possession:

(a) Referring or pertaining in any way to the employment by Universal Oil Products Company, or by its officers, attorneys, agents, or employees, of Morgan S. Kaufman and/or David Kaufman, as attorneys or agents or in any other capacity whatsoever.

360 (b) Relating to the payment of compensation to Morgan S. Kaufman, as an attorney, employed by Universal Oil Products Company, or to the approval of said payment.

It is further respectfully submitted that the testimony of those named in the foregoing list and the documents which may be produced will not furnish all the evidence which should be adduced in these proceedings. The present suggestion of certain witnesses to be called will be followed at later stages of the proceedings with further suggestions, should the Master

desire them, as to other evidence and the manner of adducing it.

/s/ ARTHUR C. DENISON
/s/ J. BERNHARD THIESS
/s/ THORLEY VON HOLST
Amici Curiae."

The Master: Have you gentlemen anything to say about that?

Mr. Harris: I do, your Honor, and may I ask that my remarks be put on the record? 362

The Master: Yes, very well.

Mr. Harris: We construe the order of the Circuit Court of Appeals referring the matter to you, which order was dated November 26, 1942, as having for its primary purpose an investigation by the Court looking toward the vindication of the honor of the Court, or otherwise, as the case might be. Otherwise, as it seems to us, Your Honor is not a Master in a litigation but an investigator for the purpose of advising the Court of his conclusions and findings.

We welcome such an investigation. We will cooperate to the extent of our abilities, and wish to have the investigation as wide as possible.

To the extent that the amici curiae are really litigants, 363 or to the extent that any finding by His Honor or by the Circuit Court of Appeals might affect property or other rights of Universal Oil Products Company, or in any wise affect the merits of the two Root cases, although we entertain in our own minds no doubt as to the propriety of everything which has transpired and that will be duly shown, nevertheless, we feel we should be somewhat derelict in our duties to our client if we did not make upon the record an objection to the jurisdiction of the Circuit Court of Appeals, and, consequently, of Your Honor, to hear and determine in a summary and informal manner, and in a proceeding

which doesn't amount to a controversy or suit prescribed by the Constitution of the United States, matters which affect or might affect property rights of our client and a judgment in its favor in the Court in this circuit.

I should say in explanation of my remarks that if we are right on the question of jurisdiction, then, as we understand the law, it is not necessary to make an objection at this time, an objection to the jurisdiction of the subject matter may be taken at any time even on appeal, but I thought in fairness both to the Master and to counsel who are present for the amici curiae that I should attempt on behalf of our
365 client to distinguish between what I regard as the function of the order of the Circuit Court of Appeals and what it might conceivably be attempted to be used for by counsel for the amici curiae who I understand are counsel for interested parties in other litigation, and therefore, purely for the sake of advising Your Honor and counsel, formally object in so far as this proceeding is other than an investigation by the Court looking toward vindication of the Court's honor, or otherwise; object that the Court is without jurisdiction to take testimony or to take any action, and that the order under which these hearings are held is likewise without jurisdiction, and without going into the details I urge that
366 the investigation and order are not made in a case or controversy, as that case is defined in Sections 1 and 2, Article 3, of the Constitution of the United States.

That there are not now before the Court or the Special Master any adverse parties so that any case or controversy can be said to exist.

That there is not now before the Special Master any justiciable controversy over which the Circuit Court of Appeals or the Special Master has jurisdiction.

That the persons designated in the order of the Circuit Court of Appeals herein as friends of the Court are not adverse parties technically, and have no standing as adverse

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parties in the cases of Root Refining Company, Defendant-Appellant against Universal Oil Products Company, Plaintiff-Appellee, Nos. 5546 and 5648.

That the order of the Circuit Court of Appeals herein and hearings before the Special Master are beyond the jurisdiction of the Circuit Court of Appeals because the cases above referred to were disposed of by the Circuit Court of Appeals at a term other than the term at which the order herein was made, and, finally, that the Circuit Court of Appeals at the time when the order herein was made had no jurisdiction whatever in the cases above referred to, because the term in which said Court had decided said cases and handed down its mandate had previously come to an end, and these objections I make without limiting the generality of my general objection.

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Your Honor having stated it is for the information of the Master and counsel, I again said that in so far as this proceeding is an investigation by the Court of its membership and the propriety of acts taken by its membership even with relation to any of our clients, we welcome the opportunity for that matter to be heard and determined by Your Honor in any manner which you see fit.

Now that our objections may be said to have substance, I should point out that under the order, I take it Your Honor may make your own investigation, may consider proceedings before the Grand Jury both in New York and here, and may make such further and other investigation as to Your Honor seems proper. I think that is entirely proper in such a proceeding, to inquire into the honor of those previously sitting on this Court.

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However, if it were to involve any property rights of our clients, including the validity of any judgment, then, of course, none of this evidence would be admissible in a plenary action. We would have a right to require it to be sworn to and delivered in open court with an opportunity for cross-

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examination, and all the rights which litigants are guaranteed in a controversy or case under the Constitution of the United States.

Directing myself to the suggestion for a subpoena duces tecum, it is our view that Your Honor has plenary power to make such investigation as you see fit, and to inquire of such sources as you see fit, and in that we will cooperate with you to the extent of our ability.

To the extent that subpoena duces tecum or other subpoenas are to be issued upon the suggestion of counsel for either side here, it seems apparent to me from a reading of
371 the order that the same latitude is not afforded, that those should be considered and determined just as if a subpoena duces tecum was being requested in the ordinary controversy, and should be, accordingly, determined by rules of law.

I particularly find myself somewhat surprised that counsel have requested Your Honor to issue a subpoena duces tecum directed to any of the counsel who have appeared in this controversy because both in the oral argument before the Circuit Court of Appeals and in their petition, as I recall it—certainly, in their briefs—counsel for the amici curiae have disclaimed any intent to involve any lawyer who appeared in the case. All of these lawyers appeared in the
372 case.

So far as Your Honor is interested in talking to Mr. Hall, or Mr. Thomas, or Judge Morris, or anyone else in the case, if Your Honor wants to see them in your office or see them in their offices and ask them to throw their books open to you for investigation, we welcome that, but so far as producing them for the inquisitorial gaze of counsel for the friends of the Court is concerned, it seems to us that a proper case for the issuance of a subpoena duces tecum should be made before one is issued.

I don't know what the practice in this court is. In any event—and that is by the way, but I assume that the sub-

poena duces tecum must be issued out of the court, itself, rather than by the Master. Perhaps the practice is different in this circuit. In any event, we don't want to be technical, but we do think that while in form an investigation by Your Honor between parties who are not adversary to each other in the technical sense actually becomes a litigation without giving us the rights and remedies of a litigant before the Court, we should request that the usual requirements be adhered to, and that counsel should make a proper case for the issuance of a subpoena.

I know that in the Second Circuit the presentation of such 374
a suggestion as this—at least, it is my belief—would not in any such sweeping and summary fashion as this result in the issuance of a subpoena duces tecum of this type, it seems to me that counsel must show more in so far as their becoming litigants rather than assisting the Master in making an investigation for the Court. They must show far more than they would just like to browse around among some lawyers' and some other people's papers.

Again I urge Your Honor that we not put ourselves in your mind for one moment in the position of being obstructive. We will throw everything open to your own investigation and consideration. We do feel that these gentlemen who
are adversaries of our company and attacking its property 375
rights in other jurisdictions should not acquire an advantage which is not permitted by law in this investigation which, as we see, is directed toward a consideration of whether the Court as previously constituted did wrong in the moral sense, and whether any of our clients or their representatives or agents were involved therein.

The Master: Do you wish to reply?

Mr. Von Holst: I think that so far as the jurisdiction of the Court is concerned—the jurisdiction of the Court of Appeals and of Your Honor as Master thereof—there is nothing that needs to be said at this time by the amici for the reason

that the order speaks for itself, and these proceedings are held pursuant to that order, and the Master's powers are defined therein.

Now, I am a little at a loss to understand the objection which has been made to the suggestion of the issuance of subpoenas. Certainly, there is nothing in this memorandum which we have submitted to Your Honor which constitutes an attempt to browse around among papers of lawyers.

These paragraphs are all certain in their subject matter. They are all directed to the employment or payment of Morgan S. Kaufman or David Kaufman, and they don't go
377 beyond that. The order gives the Master:

> ". . . power to issue subpoenas on the request of said amici curiae or upon his own motion . . ."

The suggestion contained in the document submitted this morning needs no other ground by way of petition to support its apparent and self-evident relevancy and materiality to the investigation. No one could question that if any of these documents or records, memoranda, diaries, telegrams, and so forth, are in existence that they would have a material bearing upon the investigation, anything which tends to throw light upon the manner in which Kaufman was re-
378 tained, how much was paid him, and so forth.

So far as the procedure which the Master is going to follow in this investigation is concerned, the presence or the absence of the amici, that, of course, is entirely for the Master to decide. We have nothing to say on that.

We understand our position here under the order of the Court appointing us amici curiae to be that of assisting in any way that it is within our power to assist. We will be governed entirely by the Master's requests and suggestions along that line.

In so far as the fact that we are interested in other proceedings is concerned, that is to say, in other cases wherein

Universal is plaintiff and we appear as counsel of record for the defendant, that has no bearing upon our status as amici in these proceedings for the reason that it was fully known to the Court of Appeals at the time the application was made, and, in any event, is generally the case where amici are appointed. They generally have some collateral interest.

The same argument was made before the Court of Appeals at the June 4th hearing last summer, and subsequently in the answer to the formal petition which the Court of Appeals desired be filed, and which was filed. Mr. Thiess calls my attention to the fact that Mr. Harris has mentioned the fact 380
that we have disavowed any suggestion that any reproach is directed to counsel of record for Universal in the Root cases. We, of course, reaffirm that disclaimer, but we fail to see that there is anything in the suggested memorandum for the issuance of subpoenas which in any way in the slightest conveys any implication or suggestion of reflection upon certain counsel.

The Master: Have you anything further to add, Mr. Harris?

Mr. Harris: Your Honor, I have only this, that I don't think that Mr. Von Holst quite understood my remarks. I was not trying to put him in a position where a Judge in 381
litigation I heard of once said to a litigant who wasn't formally in the case, "Either appear or disappear."

I recognize their status here, but I would feel that in so far as they became litigants or attempted to become litigants rather than merely sitting in an investigation of the Court, and in this relatively informal manner attempt to gain an advantage which they could not have if they were litigating; for instance, if they set up the defense of unclean hands in these litigations that are now pending against them, it might constitute a defense to the actions if proved, and they would have to prove them in a certain way.

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To the extent Your Honor permits them, over our objection, to be litigants in this matter, it seems to me they should have no greater advantage than they would have in such a plenary action. That is my whole point.

The Master: The objection so far as it goes to the jurisdiction of the Court of Appeals and myself as Master appointed by the Court of Appeals, I assume has already been passed upon by the Court.

So far as the objection relates to the requests made by counsel for the amici curiae, as I read this order it was expected that I would make use of them or of counsel for
383 the other side in any investigation which I was directed to make, and, consequently, that either side might suggest persons to be subpoenaed, or documents to be subpoenaed, and that it was my duty to proceed in that manner.

So far as regards the relevancy of the matters covered, I take it that will be passed upon when the witnesses come before me. If any testimony is offered or any documents are presented which do not appear to me to be relevant to the investigation, of course, I would rule that they be excluded. I therefore overrule the objection.

Mr. Harris: Just as a matter of clarification, Your Honor, may I inquire whether you are overruling my objection that
384 the application for a subpoena duces tecum at the instance of counsel for the amici should be in the regular and usual form for such applications in court? Because Your Honor understands if we see Your Honor is interested in anything these people have, or anyone else has, we will freely lay it open to your inspection either here or wherever you desire, and if you find, just as you did in the case of the records of the Grand Jury, anything which you think is relevant to your investigation, then, of course, it should be brought forward.

But it would seem to us that when counsel began to try a defense, an alleged defense to the Root case in this investi-

gation of the Circuit Court of Appeals for the Third Circuit, we were justified in asking that they proceed in the same manner as if they were trying to sustain such a defense of an action. 385

Mr. Von Holst: May I speak to that, Your Honor?

The Master: Yes.

Mr. Von Holst: It seems to me there is nothing that has been suggested thus far in the proceedings of the Court of Appeals or in the proceedings before Your Honor that remotely suggests any issue of defense such as might have been interposed or could still be interposed in the Root case, and, therefore, I don't see the ground of the objection to the issuance of subpoenas. This is directed entirely to a matter in issue which is before Your Honor on this investigation. 386

Mr. Harris: There is no issue, Your Honor, in this matter, so far as I see.

Mr. Von Holst: Perhaps I should further clarify the situation—we have already done so before although Mr. Harris wasn't here—in this respect, that we do not represent the Root Refining Company, that is, by "we" I mean the amici, in any situation which they might have, the Root Company having settled its case and not being represented in these proceedings either before the Court of Appeals or here, and we do not represent them. 387

The Master: So far as regards the power to issue subpoenas duces tecum, you will recall the Court specifically said in its order that I shall have power to issue subpoenas duces tecum and that this should be done at the request of a party. It would seem to me the order is perfectly clear on the point, so far as the direction that I have received from the Court is concerned, which, of course, I am bound by.

Mr. Harris: Your Honor, we very gracefully bow to your interpretation of the order.

The Master: Is there anything further to be discussed at this meeting?

Mr. Von Holst: I would think the time of the next hearing, if the Master entertains favorably the suggestion for the issuance of subpoenas.

We would like to add as amici that order we have drawn there is not a formal subpoena; and if Your Honor so requires, we will be pleased to draw up the subpoenas in the regular form incorporating those provisions.

The Master: Yes, I would like you to do that. I think I am directed to issue subpoenas whenever requested by counsel, and if you will prepare them I will issue them, and
389 you will see to it that they are served, will you?

Mr. Von Holst: Yes, sir.

Mr. Harris: Your Honor, by my remarks in saying that we submitted to Your Honor's interpretation of the order, of course, Your Honor will understand that we don't waive our interpretation——

The Master: Oh, yes, I understand. Now, about the time for the next meeting, may I ask, you have covered here a number of witnesses, I see, and these are probably not the entire list of witnesses you intend to call.

Mr. Thiess: No, it is not the entire list.

Mr. Von Holst: That is explained in the last paragraph, if Your Honor pleases.

390 (Discussion off the record.)

Mr. Von Holst: In the examination of witnesses by amici curiae we feel that the privilege should be extended of adverse examination as though under cross-examination, that the amici should not be called upon in a matter of this kind to vouch for the credibility of witnesses whom they call, and to be bound by their replies. If it were otherwise, the situation would not tend to become clarified, but rather to become obscured.

Mr. Harris: May I be heard on that, Your Honor?

The Master: Yes.

Mr. Harris: Your Honor, it seems to me that counsel are immediately recognizing the difficulties of their position, which is to enjoy all the privileges of a litigant with none of its responsibilities, and while they call themselves amici curiae, and while they are technically in that position in that they are not technically litigants, we all know very well that their interest in this case—and they won't deny it—is to win a point.

Your Honor, of course, is not only in the position of a Judge but you are also constituted an investigator, and so you may make such independent investigation of such witnesses as you desire without in any wise being bound by 392
their testimony, of course.

But for counsel to come in and claim all of the advantages of a litigant when they are not, other than technically, friends of the Court, and not assume any of the responsibilities of it, seems to me unfair.

Now, if they can persuade you to call these witnesses perhaps they will be in a different position, but there again we want Your Honor to call everybody you are interested in, but I don't think we ought to be put at the disadvantage of litigating with someone who doesn't have to bear the responsibilities of a litigant.

Mr. Von Holst: On that point, Your Honor, it seems to 393
me that there should be a clarification once and for all of our status here.

We have just been accused of having one only interest, namely, to win a point, and have been declared as technically friends of the Court.

Now, the point was made before the Court of Appeals that we were no fit persons to appear as friends of the Court because of the fact that we have battled Universal in the Root case and were adversaries to them in pending litigation. In spite of that objection, the Court of Appeals appointed us.

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Now, if we misbehave ourselves Your Honor has power to control us, but we do object to aspersions on our standing which at present have no basis whatsoever.

On this question of adverse examination, if the Master, himself, called the witnesses in a proceeding of this kind, obviously the Master would not be bound by their replies any more than when a witness is called as a witness of the Court. In whatever way it be done, if Your Honor desires the amici to examine witnesses, that should be the basis upon which the examination should be conducted, that the
395 witness be a witness called by the Court, and then that both sides may cross-examine if necessary. That is the point I submit.

Mr. Harris: Your Honor, may I in response to that and purely in the interest of clarifying the position say this, those matters were before the Circuit Court of Appeals, and the Circuit Court of Appeals were very careful explicitly to set forth the rights and duties of all parties, and it provides that the:

> ". . . the Master shall have the power to issue subpoenas on the request . . . of the said amici curiae . . ."

396 Then after authorizing Your Honor to administer oaths and pass on questions of evidence and procedure, it authorizes Your Honor to:

> ". . . examine witnesses himself or permit them to be examined and cross-examined by the parties interested in the said causes. . . ".

Now, I can't find any clearer language——

The Master: And by the amici.

Mr. Harris: Oh, yes, I beg your pardon.

> ". . . and by the said amici curiae within such reasonable limits as he in his discretion may impose. . ."

Now, I can't imagine any clearer language to indicate that whoever calls the witness shall examine and that the other persons before the Court shall cross-examine.

I don't cast any aspersions upon my very learned and esteemed friends. I certainly don't want to let myself get in the position on the outset of what I hope will be the beginning of an interesting and instructive reference at odds with counsel. I shall hold my temper and I don't mean anything except that these gentlemen don't claim—I don't see how they can claim—that they appeared before the Circuit Court purely in a disinterested fashion, Chicago lawyers coming to Philadelphia for the purpose of helping the 398
C. C. A. investigate its own bench.

Now, we must be realists. We all live in a real world, and while these gentlemen are called amici curiae, the Court couldn't call them anything else. We don't say that they are going to be unfair, but they are obviously here in the business of clients, and just not to recognize that fact would not be to recognize the reality of the situation, and I mean nothing else. I have the highest esteem for all of them, and I won't be angry no matter what they say about me.

The Master: Well, I think as realists we must recognize, of course, that you gentlemen on either side have private interests that you are serving as well as the public interest. 399

On the other hand, the primary interest of the Court, I think, was public interest to make sure that its decision in this case had been, as it said, not tainted with fraud.

I do not think that the investigation—for that is all it is—should be conducted strictly according to the rules of evidence in litigation. I certainly do not feel that either party should be bound by the statements of witnesses that they call, as very often, certainly, they will be adverse witnesses in a sense.

As regards the examination, itself, whether it should be cross-examination or not, I think we can control that as we

come to it. I don't think that is a very serious thing one way or the other. But I do think that its being an investigation, no one should be considered bound on either side if a witness makes an unexpected reply, which sometimes does happen.

Now, is the only thing before us the date of the next hearing?

Mr. Von Holst: There is one other matter, if the Master please, and that is we should like to make a request for the production of, I think it is two, and possibly three further Stokley letters addressed to Cooley.

401 Mr. Neuman: They were referred to in the Government trial but they were not produced, and so we don't know the contents, but we do have them by exhibit numbers.

The Master: At what trial were they produced?

Mr. Neuman: At the second trial.

The Master: In Philadelphia?

Mr. Neuman: Yes.

Mr. Thiess: As it stands, the correspondence is incomplete.

Mr. Newman: They are in the possession of the Government.

The Master: The letters you speak of are in the possession of the United States Attorney, presumably, which were not copied into the record, is that right?

402 Mr. Thiess: Correct.

The Master: If you will specify what they are, I will make inquiries about them.

Mr. Von Holst: Maybe we could just drop you a note with that information.

The Master: All right. As I said before, I have this Grand Jury record, and I will look through it as soon as I can, and if I find anything in there that I think will be of interest to either of you, I will call it to your attention.

Mr. Thiess: May I ask, as far as going through this additional record is it of such a size that it is going to take some time to go through it, or would you be able to go through it in the near future so that if there is anything of interest there we may see that before we get started?

The Master: I think I can read it very rapidly.

Mr. Thiess: Then we can probably see it before we get started?

The Master: Yes.

Mr. Harris: Your Honor, I see that we are to produce certain records or will be required to, when Your Honor signs this subpoena, of the Universal Oil Products Company, the 404
South Dakota and Delaware companies, the president and secretary, two witnesses and all of those documents, Mr. Gary and his documents, that is three; Mr. Berl and his documents, that is four; Mr. Hall and Mr. Thomas and Judge Morris, and their documents; that is seven, and Mr. Dwight, eight. There are eight witnesses, every one of whom is a busy lawyer, and——

The Master: They are all lawyers, are they?

Mr. Harris: They are all lawyers with the exception of Mr. Halle and Mr. Behrens, secretary of the company.

Mr. Thiess: Behrens, I believe, is a lawyer, but not in the practice of law. 405

Mr. Harris: Then those are all busy practicing lawyers. Mr. Halle is an aged man today 75 years old, I understand, and Mr. Behrens is a young active man. The others are busy men of various ages and states of health.

Mr. Hall has not been as well as he might be. He is one of the active patent lawyers in the matter. Do I assume that counsel propose to take these gentlemen up—you don't want them here on the same day sitting around?

Mr. Thiess: No.

Mr. Harris: We will have to fix up a schedule for their appearance. We will have to give them certainly, I think, several weeks notice to arrange their time, particularly if

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Your Honor would like to hold these hearings on several consecutive days and attempt to get through with them.

The Master: I would like to because several months have gone by already, and we haven't really gotten started yet, and the Court of Appeals did enjoin me in its order to proceed with all convenient speed, I think was the language.

Mr. Harris: Your Honor, of course, my colleague on whom I must rely most heavily, Senator O'Mara, at the present time tells me he is pretty well tied up in the Legislature of New Jersey which is attempting to get through with its business for the current year, and, Senator O'Mara, suppose
407 you tell His Honor what your engagements are.

Mr. O'Mara: Well, we are driving for a final adjournment of the Legislature which we hope to accomplish for the first of May. That means we will be in session probably all of the remainder of April, starting on next Monday, without any substantial interruptions.

The week of the 5th of May, by which time I expect that we shall have adjourned, however, is the opening of our State Supreme Court for the May term in which I have three cases scheduled for argument.

As far as my personal engagements are concerned, I would recommend a continuance of the hearing until the week of May 12th, and I think in view of the probable en-
408 gagements of Mr. Thomas, possibly Mr. Hall also, that at least several weeks notice should be given to them in order that we can guarantee their appearance at the time that Your Honor fixes.

The Master: I think that I could accommodate my own time.

(Discussion off the record.)

Mr. Harris: Your Honor, could we advise you, and either through you, or directly counsel within the next few days whether we can conveniently assemble those men for the week of the 12th? You tell me about how long you will take with each man.

Mr. Thiess: The difficulty is that it is going to be very hard to do that.

(Discussion off the record.)

Mr. Thiess: The question I ask is this, as far as these papers that we wish to put in is concerned, and suggest to Your Honor that we might want to offer, those will be sufficient for proof of the matters as contained in those papers, and we would not have to call the witness to prove that particular thing.

The Master: You are referring now to the papers that 410
have been examined?

Mr. Thiess: That have been examined.

The Master: And have been admitted in the Grand Jury proceedings in New York, or elsewhere?

Mr. Thiess: Or the other papers that you have procured for us.

Mr. Harris: My understanding is that so far as the investigation by the Master of the propriety of the Court's action is concerned, but not waiving any of our client's rights with regard to the merits, any property rights or judgments in its favor, we, of course, frankly will freely concede that the documents which the Master has in his possession are true and accurate documents covering what they purport to 411
cover. If we find any errors in the documents, we will call them to your attention or produce the other documents for your examination.

The Master: Very well.

Mr. Harris: There is one thing, those F. B. I. reports I think stand in a little different category. Those are narrative statements by men who have not even sworn to them, and whose position it is to try to put people in jail; I mean that is their career, and I think the contents of those have all been addressed to the witnesses, one or the other of them, and questions asked about them, and so I feel that while it

is all right to stipulate the accuracy of the testimony on those matters, these unsworn statements of F. B. I. agents stand in a little different category.

The Master: I think you would accede to that.

Mr. Von Holst: I think that is probably true, Your Honor. There might be subject matter of the F. B. I. reports we may prove by calling the F. B. I. men, but I would agree that a statement not sworn to by an F. B. I. investigator would not be original evidence.

The Master: No, it would be hearsay. Then you want to fix May 12th, I understand?

413 Mr. Thiess: That will be Tuesday.

The Master: Do you actually want these subpoenas issued?

Mr. Harris: No, I don't think so. So far as we are concerned, if you will tell us you will sign the subpoena in this form, we will regard it as a subpoena unless some of our witnesses want to see your signature. In that case I will advise you very promptly.

(Discussion off the record.)

Mr. Harris: May we let Your Honor know, and counsel, how these men's time will line up just as promptly as we can

414 get hold of them, which will be in a few days?

Mr. Thiess: And, of course, we will do everything to suit their convenience.

Mr. Harris: We will use our own judgment a little bit on how to space them, because there is no use having all seven here all morning, and we may have some more on Tuesday, and some more on Wednesday. Does Your Honor want to go right on that week every day?

The Master: As long as you can do it, I would like to conclude as far as possible with those witnesses. I see the 11th is Monday. You said the 12th.

Mr. Thiess: The 11th is all right.

415

Mr. O'Mara: I made the statement. The 11th is Monday.

Mr. Harris: Judge Morris tells me he thinks with the possible exception of anything which Mr. Halle or Mr. Behrens might have there isn't a thing that anybody has that would be responsive in the way of documents to the subpoena. If that is so, I think we might bring a few more of them down here. Do you propose to examine them on the matter before the Master generally rather than merely with respect to documents?

Mr. Thiess: We might have just a few questions we would like to ask them.

416

Mr. Harris: If we find that to be the case, we may produce them a little bit more rapidly.

Mr. Morris: It seems to me that there isn't a person, Hall, or Thomas, or any of these others that has a chance in a million of having any documents about this, and I think they will all tell you that the first they knew of it was when told by Mr. Belknap that the thing had been done, and you will be able to turn us out at the rate of five a minute.

The Master: Does the hour of eleven suit you?

(Discussion off the record.)

417

Mr. Von Holst: I suggest we make it eleven the first day, Monday.

One other point: Do we understand now that the earlier suggestion that the Master gave to us that we draw subpoenas for the Master's signature is not required?

Mr. Harris: That is right.

Mr. Morris: We will assume that they have been issued in conformity, reserving the objections made by Mr. Harris.

(Adjourned to Monday, May 11, 1942, at 11:00 o'clock A. M.)

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Transcript of Hearing, May 12, 1942

Meeting held before Thomas Raeburn White, Esq., Master, at 1930 Land Title Building, Philadelphia, Pa., on Tuesday, May 12, 1942, at 11:00 o'clock A. M.

Present: THOMAS RAEBURN WHITE, ESQ., Master.
J. BERNHARD THIESS, ESQ.
(77 West Washington Street, Chicago, Ill.),
SIDNEY NEUMAN, ESQ.
(77 West Washington Street, Chicago, Ill.),
419 ROBERT W. POORE, ESQ.
(77 West Washington Street, Chicago, Ill.),
amici curiae.
HUGH M. MORRIS, ESQ.
(3018 duPont Building, Wilmington, Delaware),
EDWARD J. O'MARA, ESQ.
(15 Exchange Place, Jersey City, New Jersey),
RALPH S. HARRIS, ESQ.
(100 Broadway, New York City), and
JOHN R. MCCULLOUGH, ESQ.
(100 Broadway, New York City),
Representing the Universal Oil Products Company.

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The Master: I have asked the District Attorney to furnish the copies of the letters which counsel referred to at the last meeting and which were introduced in evidence at the trial of Judge Davis but not made a part of the record. I have had no reply from the District Attorney, and I have instructed Mr. Bull, of our office, to go down and see him this morning to obtain copies of those letters, if possible.

Mr. Thiess, are you taking the laboring oar, here?

Mr. Thiess: I suppose I am.

Mr. Harris: May I observe, Your Honor, that pursuant to the suggestion for a subpoena we have produced each of

the persons mentioned therein. I have already told Mr. Thiess that in view of the fact that the lawyers have absolutely nothing in response to the subpoena possibly we might make time if we took them first, and I think Mr. Thiess is agreeable.

The Master: All right.

Evidence on Behalf of Amici Curiae

William F. Hall, having been duly sworn, was examined and testified as follows: 422

Direct Examination by Mr. Thiess:

Q. Mr. Hall, you are a patent lawyer residing in Washington, D. C., are you not? A. I am a lawyer specializing in the practice of patent matters residing in Washington, D. C.

Q. For how long have you represented the Universal Oil Products Company? A For about 25 years.

Q. Do you know Morgan S. Kaufman? A. I don't think I have ever met him.

Q. Have you made a search for the memoranda, reports, correspondence, diaries, writings and prinfings referred to under Item 1A and B, pages 119-20 of this record? A. No. I knew I had nothing of the sort. 423

Q. Since you have stated that you have never met Morgan S. Kaufman, as far as you are aware, he wasn't active at all in the trial of the Root case or any of the proceedings in the Root case? A. It may have been that he called at the office of Universal when we were working on the brief on the appeal, and it is possible that I met him at that time, but I have no definite recollection that I did. At the time that we were working on that brief, I don't know whether it is unusual in such cases, but in this particular case Judge Haight and I didn't always see eye to eye, and I am not sure that I discussed the case or the brief with Mr. Kaufman at that time; that is, I have no definite recollection that I did. I had my

own ideas about the part of the brief that I was responsible for, and I was having quite a contest with Judge Haight about that part of the brief, and whether I saw Mr. Kaufman at that time I am not sure.

Q. And you wouldn't know how long Mr. Kaufman was there at that time, if he was there? A. No, I would not. I know the room that I was working in, and he was not in my room, the room I was occupying in the preparation of the brief at that time.

Q. And this was in the office of the Universal Oil Products Company? A. As I recall it.

425 Q. Do you remember at all when that was, Mr. Hall? A. No, it seems to me it couldn't have been very long before the brief was filed, but I have no recollection as to dates at all, and I haven't looked it up.

Q. Can you tell me when it was that you first learned that Mr. Kaufman had been retained, Morgan Kaufman, by the Universal Oil Products Company? A. My recollection is that was while we were at Atlantic City preparing for the original trial of the case. I am not sure it was there, but my recollection is that it was, and that Mr. Belknap told me that he had retained him.

Q. Do you remember about what that date was at Atlantic City? A. Well, I couldn't say except I looked up the
426 briefs to see when that trial was, and from that I now recall that it was in '32, but if I had not looked it up recently to find out when that trial took place, I couldn't even roughly approximate it.

Q. But it was while you were preparing for the trial of the case? A. That is my recollection, yes.

Q. Would you please give me the substance of the conversation with Mr. Belknap when he told you about Mr. Morgan S. Kaufman's retainer? A. Well, I haven't——

Mr. Harris: He hasn't said, of course, that was the source of his information.

Mr. Thiess. I thought he did.

The Witness: I did.

Mr. Harris: I beg your pardon, I didn't catch that.

The Witness: I haven't any recollection of it at all. I can just imagine generally what he said. I paid no particular attention to it.

As I think is well known, Mr. Belknap, so far as Universal was concerned, was a law unto himself. In his lifetime ramblings, as Professor Lewis says to his assistant, "I am not arguing with you, I am telling you," and Belknap was about the same way in reference to these cases. He would tell you sometimes 428 what he was going to do, or what he would do.

Now, my end of the Universal work was simply patent matters. I had nothing to do with their general policies but just prepared for the patent cases, which was true when we were in Atlantic City. I didn't stop at the same hotel that the other parties who were there on that occasion did. As I now recall, I was at the Dennis Hotel, and there was with me at that hotel Dr. Lewis of the M. I. T., and Professor Weber, and Professor MacAdams, and we were working on these patents in suit very desperately.

Most of it was over my head, and we were working 429 out so-called heat balances, particular heat balances for the Egloff set-up, and that is where I spent most of my time, and it is possible that I came up—I think the rest of them were stopping at the Traymore, and I was probably up there one or two times, and, of course, walking on the boardwalk with Belknap, who was a close personal friend of mine, and it is my recollection that it was on one of those occasions that he told me that this man Kaufman had been retained, that he was very favorably known to the Court, and he was available for us.

By Mr. Thiess:

Q. Did he at that time indicate to you at all how he expected to use Mr. Morgan S. Kaufman as counsel in this litigation? A. No. My recollection is, so far as my end was concerned, he put that up to me, if I wanted to use him, if I had any use for him he was available to be used.

Q. Did you discuss at any time with other counsel in the case this retention of Morgan Kaufman? A. Well, not at all until after these charges were made against Judge Davis. Then I saw Judge Haight on one of my trips to Judge
431 Haight. Just about that time Judge Haight and I had three very important cases before the Circuit Court of Appeals. One was the Atlantic Refining Company against Berry, and one was Standard Oil Development Company against Berry, and one was Pangborn Corporation against American Foundry & Equipment Company.

I was up there in his office quite a good deal because we had the same procedure in preparing the briefs and outlining the work we would do in those cases that I told you about in the Root case. While we worked together, we did not always work as harmoniously as you might think, and I would prepare papers, briefs, and then go up to his office, and he would cut them up and growl all day long over these
432 briefs, and what ought to be said, and what ought to be used, and something of that sort, and, of course, on one of those occasions, or maybe one or more of those occasions he told me about this investigation of Judge Davis which was on foot at that time. Unquestionably I talked about this matter with Judge Haight.

Q. Do you remember the conversation? A. No, I don't remember the conversation.

Q. And you didn't discuss Morgan S. Kaufman's retainer with any other counsel in the Universal Oil Products Company? A. No, I never discussed his retainer, and I may say that although I have been connected with Universal for 25 years, I have never been consulted in connection with fees

paid to anyone. I have never known the fees which have been paid to anyone in any of the cases, and although Universal gave to a number of their attorneys what you may call an honorarium at one time, the Government tried to collect income taxes on that, and we opposed it, and it went to the Supreme Court, and although I had been in the office of the Supreme Court on innumerable occasions since then and just by asking for the record in that case I could see the amount which was paid to everybody as a bonus or honorarium, I have never looked at it, and I don't know today what was paid to anyone as a bonus in that connection, or any other fees that were paid, and I had nothing 434
whatsoever to do with the fees that were paid to Kaufman.

Q. I would like to ask you this, Mr. Hall: was there any reason why the question of Mr. Morgan S. Kaufman's retainer by Universal was not discussed between you and other active counsel in the Root case? A. No reason except it had never been the custom for counsel to discuss between themselves retainers that each would get. Now, for instance——

Q. I am not referring to the fees at all, Mr. Hall. I mean the fact that he had been retained in this litigation. A. No. Any reason for discussing it?

Q. Yes. 435

Mr. Harris: For not discussing it.

By Mr. Thiess:

Q. For not discussing it with other counsel. A. No reason I can think of. It was not an unusual thing, you know, in these cases for Belknap to retain someone. In the suit Universal had against Standard Oil of Indiana in which we were engaged for a number of years, Belknap retained Senator Reed, and he retained Mr. German, and he never told me why he retained them, or what he paid them. As a matter of fact, I think as early as '24 Universal retained me for $25,000 a year.

436 *William F. Hall—For Amici Curiae—Direct.*

Q. Did you say '34? A. '24, for $25,000 a year, and so far as I know, none of my associates knew anything about it until this thing came up about retainers, in which I told them, and I am now under a retainer for Universal. When my health got so bad——

Q. Mr. Hall, I don't want to delve into what you are being paid. A. I don't care about that, but you raise a question whether there was anything unusual. Now, when my health got very bad where I didn't know whether I could work at all or not, or how much I could work, at my own request that retainer was reduced to $15,000 a year.

437 Now, both of those retainers was, in a sense, a minimum amount that they would pay me in any one year. I could make such charges as I thought were proper, and they guaranteed that in any one year I would make that amount of money from them, and I made such charges as I thought were proper without regard to this retainer, and Universal paid them without ever disputing them. So that there was nothing unusual, in my mind.

Q. With respect to Senator James Reed and Mr. German that you mentioned, they were very active in this Universal vs. Standard litigation, weren't they? A. Well, I wouldn't say they were active but they were riding along. I remember

438 on more than one occasion when I was cross-examining witnesses that Senator Reed was sleeping. I don't remember anything in all those years, except that he was there occasionally, that Senator Reed ever actually did. I can't recall one thing.

Q. Well, he was present, wasn't he, Mr. Hall, and examined witnesses, and argued motions? A. No, I can't remember anything like that. He might have made some inconsequential argument on a motion, or something of that kind, and he might have examined some inconsequential witness.

Q. Wasn't he quite active, now? I checked that up rather recently, and it is my recollection he was rather active in.

the examination of the witnesses in the Adams use. I am just mentioning that to see whether that would refresh your recollection. A. No, I can't recall that he was. He might have examined one witness, one or two witnesses, but I wouldn't say that he was very active. Certainly he wasn't very active in preparing for the examination of witnesses in the Adams use, because that was done largely by myself.

Q. Do you remember whether he argued any legal questions before the Master in that case? A. Well, I don't recall that he did, and I don't recall that we could have had any very intricate legal questions before the Master, but he might have. 440

Q. Well, you had quite a number of questions of evidence that were argued in that case. Don't you remember that Mr. Reed was active in that part of the litigation? A. No, sir. As I say, I did not consider him active at all. I considered him more or less as a rider, and the same was true of Mr. German.

By the Master:

Q. Was this Senator Reed of Missouri that you speak of? A. Senator Reed of Missouri, yes.

(Discussion off the record.) 441

By Mr. Thiess:

Q. Mr. Hall, have you got a transcript of the hearing in that Universal vs. Standard case? A. No, I have no transcript.

Q. Now, you spoke about the retainer that you got in 1924 from Universal. During all the years since then you have been active every year for Universal in litigation in court and otherwise, have you not? A. Yes, I think I have.

Q. I would like to ask you about Mr. Frank L. Belknap. Was he present at the trial of the Root case, do you remember? A. It is my recollection he was part of the time.

Q. You don't remember what part of the time he was there? A. No. It is my recollection that he wasn't there very much. I think at that time Mr. Belknap was suffering from very high blood pressure and heart trouble, and while I didn't appreciate it at that time as I do now—because I have the same trouble—he found it almost impossible to stay long in any one place.

Q. He didn't participate in that trial? A. Well, now, it altogether depends on what you call participation. I said he was a peculiar man. Belknap was a very fine lawyer. He
443 knew all of the facts thoroughly in his cases, he knew the proposition of law thoroughly, but so far as I know from the time he started in business—and I know him at that time—I don't recall ever having heard him argue a case. His excuse was he could find somebody better than himself to do a job, but he, of course, consulted with us in a case and gave his views, and things of that sort. He didn't examine witnesses, as I recall it; he did not cross-examine any witnesses, he did not make any argument, but he was around a large part of the day, as I now recall it.

Q. As I recollect your testimony, you stated that Mr. Belknap told you that Morgan S. Kaufman was favorably known to the Court? A. I think he told me that.

444 Q. Do you remember what he said to you about that? A. Nothing more than that.

Q. And what court did he have reference to? A. I think he had all the courts around that section in mind, that is, all the courts within the Third Circuit, both the state courts and the federal courts.

Q. And you remember nothing further about the conversation you might have had with Belknap respecting Morgan S. Kaufman? A. No. I don't remember that very well, Mr. Thiess.

By the Master:

Q. Was Mr. Belknap general counsel for the Universal? A. Yes, sir, he was general counsel. I think he was more

than general counsel, so far as I can see. He ran things, and this retainer that I told you that they gave me, he was the one that fixed that with me, and I assume when he fixed it that he had the authority in himself to do it.

As a matter of fact, one of the first patents Universal had was a Jesse Dubbs patent, the one in suit in this particular case was a Carbon P. Dubbs patent. There was a Jesse Dubbs patent, and the first contact for Universal that I had with Belknap was when he came in my office one day and had an application for patent of Jesse A. Dubbs, which had a disclosure which Mr. Belknap thought was of the same invention that had been ascribed to a Dr. Burton, of the Standard Oil of Indiana, for cracking oil for making gasoline. At least, that was the first process that we used to do that commercially. 446

Now, da Vinci, or somebody else in the far distance, might have had a general idea, but Burton was the first one to do it commercially.

Belknap had this application, and he said to me at that time, "Billy, if we can get claims in this application, as I think we can, they will dominate Burton, we can sell this patent to the Standard Oil of Indiana, and you can get enough out of it so that you will never have to work again."

Well, we got the patent with the dominating claims, but just about that time a man named Adams popped up on the horizon with a claim that he was the inventor of this production of gasoline by cracking, and as I now recall it—although I am now trying to recall something that happened 24 or 25 years ago—that broke up the deal that Belknap thought he could put over with the Standard Oil of Indiana, and finally resulted in a suit being brought by the Texas Company, that put these patents of Adams against the Universal, in which these patents were found to be invalid. 447

But that particular deal never went through and notwithstanding I got the patent as I had been instructed, I have been working ever since, it seems to me, harder and harder every year.

448 *William F. Hall—For Amici Curiae—Direct*

Q. Following up the question that the Master asked, Mr. Belknap was a patent lawyer, was he not? A. He was a lawyer specializing in the practice of patent matters, contracts, and other things.

Q. Mr. Reichmann at that time was general counsel, was he not? Mr. Reichmann of Chicago was general counsel for Universal? A. As I say, Mr. Belknap, so far as I see, was cook, captain and mate of the "Nancy Briggs". Now, Mr. Reichmann was an outstanding and still is an outstanding lawyer of Chicago, and might be considered by Universal as their general counsel. He certainly was their counsel, and
449 certainly in those days took a very active part in the affairs of Universal.

Q. Do you remember who was local counsel for the Universal Oil Products Company in the Root litigation in Delaware? A. No, I don't. We had so many able lawyers in Delaware in the cases we have had down there.

Q. But you did have local counsel in Wilmington? A. Oh, I assume so. I don't know of any case in which I was ever engaged outside of my own bailiwick where we didn't have local counsel.

Q. Were you counsel for the Universal Oil Products Company in the case of Universal Oil Products Company
450 vs. Crew Levick in the District Court of the United States for the Eastern District of Pennsylvania? A. I think one of my good associates added my name to the papers in that case. I may say, so far as that particular case was concerned, my recollection up until this morning was that I never had anything to do with that case, that I was never in it at all, although I knew my name had been put on the printed bill, but I never knew up until this morning that I had participated to any extent in that case, and I was greatly surprised this morning in my room when Mr. Thomas showed me a letter written by his office in that case to Mr. Kaufman on which there was a notation, "Dictated by Mr. Hall."

Now, I haven't the slightest recollection of having dictated that. I assume that Mr. Thomas was away and this matter required attention, and his secretary called me about the point, and I dictated the answer to be made, or the letter that was to be sent, but I have no recollection of having had anything to do with those papers.

Q. Argued no motions and had nothing to do with it? A. No, I had nothing to do with it.

Q. Is that also true of Universal Oil Products vs. the Empire? A. So far as I can now recall, Mr. Thiess, that is true, yes. I haven't refreshed my recollection about that at all. 452

Q. Was Mr. Kaufman in that case, the Empire case? A. No, not to my knowledge. I have no recollection at all on the point.

Q. Do you know who was in charge of the Crew Levick and the Empire litigation among the Universal counsel? A. Well, I don't know. I can surmise, if you want me to surmise.

Q. Well, if you don't know, I don't think that it is necessary. Do you know that Morgan S. Kaufman received $25,000 in October, 1935, for retainer and services in the Root case, and an additional $25,000 in 1936 for retainer for 1936 and 1937, and services as local counsel in the Crew Levick case in Pennsylvania? A. Well, I didn't know anything about it at the time he received it, if that is what you mean. 453

Q. You did not, but you do now?

Mr. Harris: Well, just a minute, Mr. Thiess. I don't think he ought to be called upon to testify to anything unless he does know it.

The Witness: Well, I know, but somebody might have told me. I don't know, but I don't even charge my mind with the figures. If you asked me whether I was asked to approve that, I will say no.

Mr. Thiess: That is all, as far as we are concerned.

454 *William F. Hall—For Amici Curiae—Cross.*

Cross Examination by Mr. Harris:

Q. Mr. Hall, you do recall after Senator Reed in the case mentioned had received his agreed-upon per diem, he subsequently demanded an additional fee in that case of $1,000,000, and brought suit for it, do you not? A. I recall that suit was brought, and I recall that instance because while I am not often charged with it, I thought myself that I had certainly been unduly modest in my charges to Universal.

Q. And you do know that that litigation was settled by the payment to him, in addition to his per diem, of $125,000, 455 do you not? A. I know that by talking with Halle and Judge Haight, and with some of the others that had to do with it.

Q. Do you know, also, that Mr. German, who from the testimony appears to have been even more effervescent than Senator Reed in the case, also in addition to his per diem demanded, and subsequently sued the company for an additional fee of $1,000,000, do you not? A. To the same extent I know that, yes.

Q. And that his claim, in addition to his per diem, was settled by the payment to him of $40,000? A. Well, I don't know the exact sum; I think it was a sum of that order.

Q. Isn't it a fact, Mr. Hall, that Mr. Belknap did not enter a formal appearance in the trial of the Root case, or 456 don't you recall? A. No, I don't recall that. I am quite sure his name, though, appeared on one of the briefs.

Q. I did not mean the briefs, I meant at the trial, in the minutes of the trial; do you recall? A. I don't think he did. As a matter of fact, there was also in that case Mr. William Whitney, of the Cravath firm in New York. He was also there, and his name, as far as I now recall, was not entered in the minutes of the trial, nor does it appear on the briefs notwithstanding the fact that Mr. Whitney did write an important part of that brief in my office, but it seems to me that I had some talk, or Judge Haight had some talk with

me about the names to go on that brief, and I told him we had so many lawyers that I didn't think it would look good to have them all appearing on all of these papers, and although Mr. Whitney was a prominent lawyer, and, as I say, he wrote an important part—he rewrote a part that I had written of that brief in my own office—the brief that was filed in the District Court never gave him any credit for it.

Q. Mr. Hall, is your recollection refreshed if I suggest that the attorney of record in the Root case in Delaware was Mr. Berl? A. Well, it would either be Mr. Berl or Judge Morris. We were torn between those two gentlemen always down in Delaware. 458

Q. About how many lawyers were working on the Root case, whether their appearances were noted, or whether they worked actively, or were merely retained in the case and consulted from time to time, or were merely retained, do you recall? A. Well, I might be able to recall. That was Mr. Belknap. Of course, he was captain of the ship, and Judge Haight, of course, he was the first mate, and there was, I think, Judge Morris, Mr. Berl, Mr. Whitney, Mr. Thomas and myself.

Q. And numerous assistants, I suppose? A. Oh, yes.

Q. Wasn't a patent lawyer by the name of Russell Wiles of Chicago consulted, or in the case? A. Yes. I don't think Mr. Wiles was at the trial, but when we were preparing for that case we did a good deal of preparation work in Boston so we would be close to Dr. Lewis, Professor of Industrial Engineering at M. I. T., and I think it was at my suggestion that we got Mr. Wiles to cooperate with us in that case. I had a great respect for his knowledge about petroleum technology, and we were going over the patents in suit and the patents in the prior art. 459

Q. And Mr. Kaufman, to the extent that you have indicated, was available? A. Mr. Kaufman was available. Whether he actually did any work on Judge Haight's part of the brief in the Court of Appeals, I don't know.

460 *William F. Hall—For Amici Curiae—Redirect*

Mr. Harris: Your Honor, may it appear, with the consent of Mr. Thiess, on the record that Judge Haight is dead, that Mr. Belknap is dead, and that Mr. William D. Whitney, whose name will occasionally be mentioned, is abroad in the foreign military service? That accounts for his non-production.

Mr. Thiess: Yes.

Mr. Harris: I believe that is all, Your Honor.

Redirect Examination by Mr. Thiess:

461 Q. I would just like to ask you one or two more questions, Mr. Hall. You have been active throughout in the Root litigation, have you not, through all the various phases of it? A. Oh, I would think so. I have been active. Of course, I may say they don't always tell me some of the things they do, but I think I have been pretty active. Of course, you know my part of it was simply the patent questions, and I confined myself pretty closely to that, and not to policy, or these unfair competition propositions they had, but strictly to the patents, and that throughout the years is what I have done for Universal. They have entirely different lawyers for their other matters.

462 Q. And at no time in any manner whatsoever, to your knowledge, did Morgan S. Kaufman take any active part in this Root litigation? A. I wouldn't say that he took any active part in it.

Q. You never saw him at any of the hearings or in the preparation—— A. The only place that I might have seen him at all was in New York, and I am not certain that I saw him there.

Q. To your knowledge, did you ever send Morgan S. Kaufman any papers? A. Never.

Q. In the Root case? A. Never. As I tell you, I never knew that until this morning I had written that letter which went to Kaufman, and I am told by Mr. Thomas that

I dictated it; but now that is the only recollection I have that I did dictate it, that he told me, and my name is written in pencil on the carbon copy. I didn't write it on the carbon copy.

Q. So far as Judge Morris is concerned, he was more than local counsel in the Root case, was he not? He was active in the trial of the case? A. He was active in some phases of it.

Q. Well, wasn't he active also in some of the other cases, patent cases of Universal? A. Well, he may have been.

464 Mr. Thiess: That is all.

By the Master:

Q. I notice Mr. German was a name referred to. Who was he? A. He was a general lawyer practicing in Kansas City, Missouri.

Q. Did he hold some public position, too, like Senator Reed? A. No, he was just an ordinary lawyer.

Q. Did Mr. Belknap give you any reason for retaining Mr. Kaufman? A. No; he didn't, none whatsoever.

Q. Except that he said that he understood he was favorably known to the Court? A. Yes. Of course, he might have retained him to keep the other side from getting him.

465 Mr. Thiess: That is purely speculative.

The Witness: That isn't so speculative at all. I have a letter here that was written by your firm to Mr. German on February 1st, 1932. This was written to W. P. Z. German, general attorney for the Skelly Oil Company, which was one of the members of the confederacy that had banded together to fight these patents of the Universal. Now, in that letter it said——

Mr. Thiess: You better read the entire letter, if you are going to read it.

466 *William F. Hall—For Amici Curiae—Redirect*

Mr. Neuman: Or put the letter in evidence.

The Witness: All right. I will read these parts, and then I will put the letter in. Speaking firs. about Judge Denison, whom Mr. Thiess had recommended should be retained by the confederacy, this letter of Mr. Thiess says:

"He would go a long way in offsetting the atmosphere plaintiff is endeavoring to create by Judges Haight and Morris."

Again he says:

467

"We know from their past actions——" that is, Universal—"that they endeavor to put everyone who would be of any assitance to the defendant under a retainer, and I hope that we may reach Judge Denison before they have made any overtures to him."

And in this letter of the same date written by Mr. German, who is here present, he says—it is addressed to the committee that had charge of the matters of the Winkler-Koch Patent Company Defense Fund, and what I call the confederacy—having to do with the retention of Judge Denison, which had been

468 recommended by Mr. Thiess:

"As you know, we have been looking for someone to offset the force and influence of Judges Morris and Haight before the Delaware District Court and the Third Circuit Court of Appeals to which the case may be appealed from the District Court."

Now, I don't know, but Belknap might have been just getting that man out of their way so they couldn't get someone that would offset the influence of Judges Haight and Morris, whatever it was.

The Master: Do you want to put those letters in?

Mr. Thiess: I think we will put those letters in.

By Mr. Thiess:

Q. Mr. Hall, in view of your reference to these letters, you know, don't you, that Judge Denison was active through the entire Root litigation, and participated in it actively? A. Oh, yes, he did.

Mr. Thiess: Shall we mark these?

The Witness: I have learned both in court and out of court that he was active. 470

By Mr. Thiess:

Q. What do you mean by that statement? A. Well, I was told that several days before this hearing in the Court of Appeals he came to this city and was around here, and went to church with a member of the Circuit Court of Appeals.

Q. Who told you that, and when? A. I don't know who told it to me, but I was told that.

Q. And when were you told that? A. Oh, I was told that a considerable time ago.

Q. Well, when? Can't you place it by year? A. No, I can't place it. My memory is no good for years any more.

Q. Was it prior or subsequent to the argument of the 471
Root case in the Court of Appeals? A. Oh, it was subsequent to the argument.

Q. Subsequent to the argument? A. Yes.

Q. You don't remember anything except that someone told you that? A. That is all.

The Master: You better mark these exhibits.

(Photostatic copy of letter dated February 1, 1932, to Mr. L. H. Prichard, Mr. D. P. Hamilton, and Mr. I. A. O'Shaughnessy, from W. P. Z. German, was marked Amici Exhibit 1.)

(Photostatic copy of letter dated February 1, 1932, to Mr. W. P. Z. German, from Mr. J. R. Thiess was marked Amici Exhibit 2.)

Recross Examination by Mr. Harris:

Q. Mr. Hall, this question has been occasioned by the questions directed to you and some of your responses with respect to the activities of Judge Denison. I had not intended to bring that into the controversy, but do you know of any other activities of his in connection, for instance, with Judge Woolley, of the Circuit Court of Appeals? If so,
473 tell me about it. A. My recollection of it is not very keen at the present time, but it is my understanding he did write a personal letter to Judge Woolley in this case—— Q. While it was pending before the court——

Mr. Thiess: Is that also hearsay?

The Witness: No, no more than these things are generally known to counsel in the case. I know Judge Woolley disqualified himself from sitting in the case by reason of that letter.

Mr. Thiess: You know that absolutely?

The Witness: Judge Woolley didn't tell me, no, but that is the general understanding.

Mr. Thiess: That is what I say, it is hearsay then.
474

Mr. Harris: Is there any question about it?

Mr. Thiess: I know nothing about it.

Mr. Harris: You don't.

Mr. Thiess: No, not a thing. To me this is all hearsay.

Mr. Harris: We will produce the letter. I think anyone can come readily to the conclusion that he could not do anything else.

Where is that letter, Mr. Behrens? It is a letter discussing all sorts of extraneous matter in connection with the opinion and appeal, and I should suppose that an experienced lawyer would have designed it

for the purpose of causing some Judge to disqualify himself.

Mr. Thiess, are you familiar with this letter, a copy of a letter from Judge Denison to Judge Woolley?

Mr. Thiess: Whose copy is this?

Mr. Harris: From Mr. Behrens' files.

Mr. Thiess: As I understand it, as appears from the letter, copies of this letter were sent to Judge Haight and Mr. Hall; that is correct, is it not?

Mr. Behrens: As far as I recall, yes, but not of the prior letters until that time.

476 Mr. Thiess: Well, of this letter, the letter that was shown to me.

Mr. Behrens: Yes, that is right.

Mr. Thiess: Were any letters written to the Court by counsel, by Judge Haight or by Mr. Hall respecting the subject matter referred to in this letter that has been shown to me under date of September 22, 1934?

Mr. Behrens: It is right in the files, they are all there. That is the whole record.

Mr. Thiess: Are you submitting all of this?

Mr. Harris: Yes, if you are agreeable to doing so.

The Witness: Let me see it. I don't think I read any.

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(Papers were shown to the witness.)

Mr. Harris: I offer the entire sheaf, Mr. Master.

(A folder of letters consisting of 17 pages was marked Universal Exhibit 1.)

Redirect Examination by Mr. Thiess:

Q. I understand you to say it is your understanding that Judge Woolley disqualified himself because of this correspondence? A. That is my understanding; at least, I knew he didn't sit in the case.

Q. Did you know that Judge Woolley was sick at that time? A. No——

Q. And had been sick for some time? A. That may have been, but Judge Denison was writing him whether he was sick or well in this case.

Q. Has it been a practice as to collateral matters in a lot of this litigation for counsel for both sides to write letters to the Court? Do you remember any letters that the Universal wrote to the Court in Chicago with respect to the litigation? A. I don't know. So far as my practice is concerned, I don't know that I ever wrote to a Judge who was
479 liable to sit on my case giving him any facts. I have never done it, and, furthermore——

Q. Do you find any facts——

Mr. Harris: Just a minute, he hasn't finished.

The Witness: Yes, he gave him a whole recitation of facts which caused Mr. Whitney to say when he saw this letter that he was aghast that any lawyer would write such a letter, and would make him change his view on legal ethics.

I have never written to a Judge that is trying a case that I am participating in, and I have never, so far as I know, written to a Court about anything
480 that I did not send my adversary a copy of it.

By Mr. Thiess:

Q. Well, there was a copy of this letter sent to the adversary? A. Well, there may have been.

Mr. Harris: Not the earlier correspondence, Mr. Thiess.

By Mr. Thiess:

Q. And you have no recollection of counsel for Universal, especially Judge Haight, writing letters to the Court with respect to collateral matters such as are covered in this correspondence? A. Oh, no, and I am sure Judge

Haight would never write such matters as is contained in that letter of Judge Denison's.

Q. You have no recollections of his writing any letters to the Court? A. I have no recollection of his writing any letters, no, but I know from my knowledge of Judge Haight over a period of 20 years that he would not write a letter like that.

Q. My question is have you any knowledge of Judge Haight writing letters to the Court. A. I have no recollection—oh, he might have written a letter to the Court, the Clerk of the Court.

Q. I am not talking about the Clerk; I am talking about 482
the Court. A. Right there he wrote letters to the Court.

Q. Have you any recollection of Judge Haight writing letters to Judge Holly in Chicago? A. No, I haven't any recollection of it, certainly no such letter as that.

Mr. Thiess: I think we ought to object to the letter in that sheaf that is between counsel of which we have no record. It is merely a self-serving statement by Mr. Whitney as to his idea of this correspondence.

Mr. Harris: I offer it in evidence as part of the res gestae, and perhaps His Honor will decide whether it should be admitted or not.

Mr. Thiess: It may pay you to go through this, 483
Mr. Master, at this time.

Mr. Harris: I think it would. I would be very happy to have you do so.

The Master: These letters do relate, do they, to this particular occasion?

Mr. Harris: That is right.

The Master: I think I will be able to discriminate between those which are important and those that are not. I will overrule the objection and allow them to be received in evidence.

Mr. Harris: Your Honor, I would like to ask Mr. Hall one or two questions which I overlooked. I find

484 *William F. Hall—For Amici Curiae—Recross*

he is more familiar perhaps than some of the other witnesses are with it, and I can cover it right now.

Recross Examination by Mr. Harris:

Q. Mr. Hall, subsequent to the decision of the Circuit Court of Appeals in the Root case can you tell me whether or not motions or applications were made by the defendants in that case other than a motion for a rehearing? If I may refresh your recollection, was there not an application to the C. C. A. for leave to apply to the District Court to re-
485 open the case for certain purposes? A. Yes. There was a claim, as I recall it, that the suit had abated due to a transfer of title, as I now recall, from the Universal Oil Products Company, a corporation of South Dakota, to Universal Oil Products Company, a corporation of Delaware.

Q. And did the attorneys for the Universal Oil Products Company consent to the application? A. Well, of course, I think an application had to be made to the Circuit Court of Appeals to apply to the District Court for leave to file the petition, and the attorneys for Universal did consent to the application being made directly to the District Court entertaining the petition without the necessity of going to the Circuit Court of Appeals. We might have gone to the Cir-
486 cuit Court of Appeals and opposed it, and, of course, if the Circuit Court of Appeals had denied leave to appeal to the District Court, that would have ended it then and there, in the Circuit Court of Appeals, but we waived that privilege and permitted them to go directly to the District Court with the petition.

Q. Subsequent to the decision in the Court, that is, in the Circuit Court of Appeals, and the denial—— A. I may say on that occasion, although this corporation had a regiment of attorneys, a new attorney appeared there and argued the case for them. I think it was a Mr. Henderson, of Philadelphia.

Mr. Thiess: That is not correct.

By Mr. Harris:

Q. I ask you whether or not that was on a second motion for leave to reopen the Root case to introduce additional proofs? A. Well, it may have been that. I have that record at the hotel, and I can bring it around, if you want to see it.

Q. But, in any event, there were these two applications which you might have opposed in the Circuit Court of Appeals? A. Might have opposed in the Circuit Court of Ap- 488
peals and did not.

Q. And conceded at that time applications be made directly to the District Court of Delaware, is that right? A. Yes; both of which petitions were vital to our case. If we had lost on either, we were out.

Q. Now, subsequent to the decision of the Circuit Court of Appeals on the merits in the Root case and the denial of a motion for reargument or rehearing, did the Universal Oil Company have pending certain infringement suits both in the Third Circuit and in other circuits? A. Well, before the decision of the Root case we had a number of suits pending in other circuits.

Q. Was there not the National Refining case pending in 489
the 8th Circuit? A. Well, I am not sure whether it was, I think that is the 10th Circuit now there. I don't know what Kansas was then, whether it was the 8th or not.

Q. In the 10th Circuit? A. Yes; in the 10th Circuit.

Q. And that was pending subsequent to the determination of the C. C. A. in the Root case? A. Yes.

Q. C. C. A. Third in the Root case? A. Yes.

Q. Was there not a case involving the Globe Refining Company pending in Chicago at that time? A. There was one in Chicago and one in Kansas, I think.

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Q. And did not the Universal also have cases pending in the Third Circuit, the Skelly case, for example, at that time? A. Oh, yes.

Q. And might not the Skelly case have been moved for trial? A. On that we might have moved for a preliminary injunction.

Q. And might you not have moved for a preliminary injunction at that time in the Skelly case? A. Yes.

Q. Did you receive a request from counsel for the defendants in the National and Globe cases to bring those on for a
491 hearing prior to the trial of the Skelly case? A. Well, now, of course, my recollection of that is this: in those days there were very friendly relations between counsel for the confederacy and myself, and it is my recollection that one or more of them had said that although we had won down in this jurisdiction we wouldn't get anywhere out in their bailiwick, and we would not dare to go out there and sue, and it is my recollection that I made an arrangement with Mr. Thiess after the Root case that the next case we tried would be out in their bailiwick.

Q. The same patents? A. On the same patents, and in that 10th Circuit. In the 10th Circuit cases they had retained the late Mr. Earl Evans who had been president of the
492 American Bar Association and who was an outstanding man in that—well, he was outstanding all over the country.

Q. And favorably known to the Courts in that part of the country? A. Very well, very favorably known to the Courts, and a very fine man, and I agreed with Mr. Thiess that we would try a case out there before we tried any other cases, and we would try this National case.

Now, my recollection upon that is refreshed by a letter I find here that I wrote on May 11, 1937, to Mr. Brewster, who was our attorney, our local representative in those cases, May 11th——

Q. Was he well and favorably known to the local courts out there? A. Oh, very. This is written on May 11, 1937, and I said:

> "I had luncheon last week in Washington, I think it was on Wednesday, with Mr. Earl W. Evans, and recalled to his mind the arrangement I made with Mr. Thiess, and he said he remembered it, and I then told him since we had permitted Mr. Thiess to select the National case, we now felt plaintiff should select the next case in which to select the Winkler-Koch users notwithstanding we agreed to go ahead and try the 494 National case."

And I find I have a letter which I wrote to Mr. Thiess on July 9th reading as follows—

Q. 1937? A. 1935; that is July—reading as follows:

> "Dear Barney:
>
> "Re: Universal v. National
>
> Ostensibly this letter is about the above subject. Actually it is to afford you an opportunity to compliment us on the recent decision.
>
> However, I assume that it is your desire to speedily try out again the merits of the Dubbs and Egloff 495 patents in the above entitled suit, and that you will cooperate with us to this end.
>
> I would like you to furnish us with a flow sheet of the National's Winkler-Koch cracking unit, as it was operated at Coffeyville * * *"

Well, anyway, we went ahead and we took considerable testimony in that case, in that National case. We took considerable testimony in New York, and we took considerable testimony in San Francisco, and our adversaries took considerable testimony, and the case was ready for trial, and just on the eve of the trial the defendant caved, and that suit was settled.

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Q. What year was that? A. Well, let's see if I have note of that. I think that was in April, 1937.

Q. And as part of the settlement did the defendant tak a license from Universal? A. That is my recollection.

Q. Because of this they recognized the validity of th patent? A. Yes. Now, we have the two cases which you hav referred to——

Q. Is the National Refining Company still a license do you know? A. No, I don't know. We have the two case that you have referred to, one pending out there and on pending in Illinois, in the Northern District of Illinois i
497 the bailiwick of Mr. Thiess, of Universal vs. Globe Oil an Refining Company, and immediately that National suit wa out of the way they rushed in, as I recall it, and tried to ge a setting for trial of the Globe case in Kansas.

By Mr. Thiess:

Q. Didn't we get a setting of that case? A. You prob ably got a setting, yes. You probably got a setting of it, an we went into the Northern District of Illinois in their bail wick in the other Globe case, which was the earlier filed c the two cases, and got a setting there, and afterward we ha that case in Kansas taken off the calendar. Now, Mr. Thies
498 sent me a telegram reading——

By Mr. Harris:

Q. On what date? A. On June 16, 1939, it looks like— must have been in 1937, yes, 1937. It said:

"WILL COOPERATE FULLY IN AGREEIN UPON OPERATION IN LIEU OF INTERROGA TORIES AS WE ALWAYS HAVE STOP WITH RESPECT TO QUESTION OF NEXT CASE TO BE TRIED COMMA IMMEDIATELY UPON SET TLEMENT OF NATIONAL CASE COMMA WI

WERE INSTRUCTED BY GLOBE OF KANSAS TO PUSH ITS CASE TO TRIAL IN TENTH CIRCUIT STOP THIS WE DID AND SETTING FOR JUNE TWENTY FIRST WAS VACATED ON YOUR MOTION WITH LEAVE GRANTED BY JUDGE HOPKINS TO RENEW MOTION FOR SETTING STOP WHILE GLOBE OF ILLINOIS IS ALSO DESIROUS OF DISPOSITION OF ITS CASES OUR PRIOR INSTRUCTIONS FROM GLOBE OF KANSAS MUST GOVERN OUR PRESENT POSITION STOP ACCORDINGLY WE ASK YOUR COOPERATION IN OBTAINING TRIAL OF KANSAS CASE FOLLOWING WHICH WE CAN ARRANGE FOR TRIAL IN ILLINOIS CASE." 500

Now, I wrote Mr. Thiess in answer to his telegram a letter under date of June 16, 1937, as follows:

"I duly received your telegram and am, of course, pleased to learn that you will cooperate in aiding us in establishing the set-up of the Globe Oil & Refining Co. of Illinois, and its operation. Since we have gone to the trouble of preparing the interrogatories—" we had filed interrogatories in that case—"we think this 501 would be facilitated by full and complete answers to the interrogatories, which have been served. As you will, of course, observe, we have endeavored not to make these interrogatories inquisitorial, or unnecessarily annoying, but have filed but a few of the same, and these have been based upon what we understand to be information furnished by you in one of the suits in which the Globe Oil & Refining Company was a party.

I am utterly unable to understand why you, located in the Northern District of Illinois, should request my

cooperation in obtaining the trial in the Globe Oil & Refining Co. case pending in Kansas, prior to the trial of the Globe Oil & Refining Co. case which was much earlier filed, and which is pending in the Northern District of Illinois. I am amazed that your client should urge you to push the later filed Kansas case in advance of the earlier filed Illinois case.

Of course, you will not seriously contend that there is a greater difference between the Globe Oil & Refining Co. incorporated in Kansas, and the Globe Oil & Refining Co., incorporated in Illinois, than there
503 is between tweedle-dee and tweedle-dum.

Had the Kansas suit been filed prior to the Illinois suit, I would expect, under the circumstances as they exist, to be permitted to select the user of the Winkler-Koch cracking unit against whom we would next proceed to trial, and that you would cooperate with me to this end, and that your client would not, at least by implication, suggest that it would not obtain as exact justice in the Seventh Judicial Circuit as it might expect to obtain in the Tenth Circuit.

I hope, upon reconsideration, that you will conclude that the plaintiff is fairly entitled to first try
504 its case against the Globe Oil & Refining Co. in the Seventh Judicial Circuit, and will heartily cooperate with me to this end, and will discontinue what appears to me to be an unseemly effort to force to trial the suit in the Tenth Circuit ahead of the earlier filed suit in the Seventh Circuit."

We went ahead and tried that case in the Seventh Circuit.

Q. You did try it more or less promptly in the Seventh Circuit thereafter? A. Yes.

Q. And did not in the meanwhile—— A. We didn't push any of these cases we had in the Third Circuit.

505

Q. Mr. Hall, did this Root litigation involve patent rights that were vital to the Universal Company? A. Well, they considered the same patents in the Third Circuit, and, of course, at that time we regarded them vital. We probably considered every one we sued on vital.

Q. And these suits involved the property rights of the Universal which are of great value? A. Yes.

Q. Can you give us any notion of the value of the property? A. I couldn't give you any better notion than if you had a decision of Judge Holly in that Seventh Circuit suit, deciding those Dubbs patents were not infringed on purely technical grounds, if you will see his decision you will find that he said that it made a giant stride in the cracking industry.

506

Mr. Thiess: I believe this decision speaks for itself.

Mr. Harris: I merely want to get on the record the property rights here are of immense value. Perhaps you will concede that.

Mr. Thiess: No, I will not concede that.

The Witness: Of course, we considered them to be of tremendous value.

By Mr. Harris:

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Q. Did not the Universal Company sell the previous owners of the Universal Company when it was organized about 1931, the stock for some $25,000,000?

Mr. Thiess: That is irrelevant and I object to the question.

The Witness: I am not going to answer it. I am going to say you can find a statement of that in the decision of the District Court and in the Court of Appeals in this very matter that we are now concerned, and you will also find a statement as to the

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great value of this invention in the decision of Judge Holly, which is reported.

By Mr. Harris:

Q. Is it not a fact that the Universal Company, among others, has just been sued in California for $300,000,000 because it is claimed that someone else owns the patents? A. Yes, that is a fact.

Mr. Harris: That is all.

509 *Redirect Examination by Mr. Thiess:*

Q. And isn't it a fact, Mr. Hall, or do you know that the Universal was suing the Hancock Refining Company in California on these same two patents, and that after taking depositions for a day and a half of Mr. Carbon P. Dubbs, the case was dismissed with prejudice by Universal? Do you know that or don't you know that? A. I can answer it very briefly, if Your Honor please. Before Mr. Dubbs' testimony had been taken we learned, and learned some time ago, that the activities of Hancock had passed to about the vanishing point, and that the game would not be worth a candle for us to go out there and prosecute these suits.

510 Now, someone out there stirred up a claim apparently against Universal upon the ground that they had some interest for which they could get a judgment against Universal, or Dubbs, who had been paid something like $1,000,000, or upwards of $1,600,000 for a 15 per cent interest in the Dubbs invention, and they in cooperation with the Hancock people, finding Dubbs in California, probably through your office——

Mr. Thiess: I object to that.

The Witness: Well, anyway, finding he was there because it was published in a Chicago paper that he was in Palm Springs, immediately a subpoena was served on Dubbs.

Mr. Thiess: I will make a statement of record right now that that statement is not true, that they found that out through our office.

The Witness: I don't know, I said maybe, didn't I say——

Mr. Thiess: Well, I object.

The Witness: Well, I will withdraw that, then.

Mr. Thiess: I object to the witness indulging in those kinds of possibilities.

The Witness: I say it was published, the fact that Dubbs was in California was published in the Chicago papers, and immediately they served a subpoena 512
duces tecum on him and endeavored to examine him. Hancock probably actuated by one of these people, the claimants, who were sitting there beside Hancock's attorney during the examination, tried to examine him and did examine him about his early work in connection with his invention, and after they got through we had told them that we were willing to dismiss that suit.

They had a counterclaim in it, and we were willing to dismiss it before they ever started with Dubbs, and they wanted some exorbitant sum for dismissing it, and after they got through with Dubbs, after they 513
examined Dubbs, just as I said, then they agreed that they would permit the suit to be dismissed, both the original bill and the counterclaim.

By Mr. Harris:

Q. Without payment? A. Without any payment.

By Mr. Thiess:

Q. Then, as I understand your testimony, you offered to the Hancock Refining Company to dismiss that suit with

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prejudice before the testimony of Mr. Dubbs was ever undertaken; is that correct? A. Oh, yes. It wasn't worth a candle.

Q. And isn't it true that in this case prior to that time you fought a petition for a certiorari to the Supreme Court which the Hancock people took to the Supreme Court? A. Let me see. They tried to put in a belated counterclaim of some sort, unclean hands defense as a part of their counterclaim.

Q. And that was carried to the Supreme Court, and Universal fought it, did they not? A. No, Universal did not take it to the Supreme Court.

515 Q. I didn't say the Universal took it to the Supreme Court, I said—— A. Hancock lost on it. They took it to the Supreme Court.

Q. Yes, and Universal opposed it in the Supreme Court? A. Naturally, we contested the case. We wanted the area of combat as limited as possible.

Q. Now, you have referred to Mr. Henderson, and that he was engaged in the petition to reopen the case in the Root litigation, and you have also referred to the fact that the Globe case at that time was active. Isn't it a fact that the hearing which Mr. Henderson attended and the hearing on res adjudicata in the Globe case both took place when
516 counsel were busy in the trial of the Anderson-Prichard case in Oklahoma City, and that is the reason they were not present? A. Well, it is my recollection two of your chief satellites were there, and there was also there Mr. Logan who had already performed, and does perform very well for you. In other words, it is my recollection you had at least three lawyers there in addition to Mr. Henderson. This was Mr. Henderson's first appearance on the scene in any of these cases.

Q. Oh, you know full well that at those hearings neither Mr. Von Holst, Judge Denison or I were present, that we were engaged in the Anderson-Prichard case at the time.

A. That might well have been, but Mr. Neuman, who has been in all your cases was there. I am not sure about Mr. Von Holst. I know Mr. Logan was there, and a new attorney appeared on the scene.

Q. But you remember that none of the three parties that I have mentioned were there? A. No, I say I don't recall about Mr. Von Holst. I thought he was there but he may not have been.

By the Master:

Q. What Henderson is that? A. Joseph W. Henderson. 518
He is a Philadelphia lawyer. That is the first time he ever appeared on the scene, and the last, as I recall.

By Mr. Thiess:

Q. Now, you have referred to Mr. Evans. Do you know that he acted as local counsel for the Globe Refining Company in their litigation in Kansas, do you not, and that he was very active? A. I wouldn't be at all surprised.

Q. And do you know that Mr. Evans was also retained in the litigation of the Gasoline Products Company and the Globe Company and the Skelly Company in Kansas? A. I wouldn't be at all surprised. Don't for a minute think that 519
I am attempting to reflect on Mr. Evans. Mr. Evans was associated with me in a very important case in the Tenth Circuit.

Q. And he was also associated with Universal in an important case in the Tenth Circuit, was he not? A. He might have been but——

Q. Don't you know that he was? A. No, Mr. Thiess, but I don't see anything better that I could say than I got him a very important case and I have had a great regard at all times for Mr. Evans, but I also know that he was very favorably known to all of the Judges in that jurisdiction.

Q. All right. A. But I have always entertained the highest regard for him.

Q. Mr. Evans was of record in every one of our cases in the Tenth Circuit, was he not? A. Well, I will assume he was; at least, I knew he was, and he didn't hide it.

Q. With respect to the case of Universal vs. National, isn't it a fact that in that case and some of the other cases the Universal Oil Products Company entered the plea of res judicata shortly before that case was to be tried, namely, the plea was entered in March of 1937? A. I will assume that is so; I think it was.

521 Q. And isn't it also a fact that the settlement of the National case was primarily because of this plea of res judicata? A. Oh, of course, I wouldn't know that.

Q. You had nothing to do with those negotiations? A. No, not because I had nothing to do with them. I didn't represent the other side, I don't know what actuated them in settling the case. We had taken testimony in the case, and it had nothing to do with res judicata, it had to do with the merits.

Q. Isn't it a fact that you had taken testimony by depositions on the merits in the National case? A. A great deal.

Q. Prior to the time that you entered the plea of res
522 judicata? A. Possibly so.

Q. Don't you remember you did? A. I don't know of it, but I can't see that it makes any difference.

Q. It isn't a question whether you believe it makes any difference or not. We want to get these facts on the record. A. Yes, but we wouldn't have rested upon res judicata, in any event. We would have gone ahead and fought the case on the merits, and whether the res judicata charge had been put in first or last, it wouldn't have made any difference.

Q. You know when that National case was first filed? A. I think I have a note of it. My record here is April 1st, 1935.

Q. And have you a note there that the plea of res judicata was not filed until March of 1937? A. No, I haven't any note, but I know it was kind of belated.

Q. Will you accept that date subject to correction? A. Yes, I will accept that date because I know I was responsible for its being belated. I had been instructed to go ahead and file it by Judge Haight, and failed to do so.

Q. Isn't it also true that there had been a prior attempt to try this National case in Cleveland? A. There had been a bill filed in Cleveland, yes.

Q. And as I remember the facts, the Universal Oil Products Company dismissed that bill, didn't they? A. That is right. 524

Q. And then they brought the bill in Kansas? A. Immediately within a month or two. The fact about that is that we couldn't possibly try it, we were so tied up—the lawyers were so tied up we couldn't possibly try it. We couldn't get the other side to give us any leeway at all, and, consequently, there was only one thing to do, and that was dismiss the bill without prejudice.

Q. And isn't it also a fact, Mr. Hall, that a lawyer by the name of Hatcher in Kansas displaced to a large extent Mr. Brewster? A. No.

Q. Was Mr. Hatcher retained by the Universal Oil Company? A. He was, yes. 525

Q. Did he argue the motions to vacate the setting of the Globe case in Kansas? A. Well, I don't know whether he did or not, but I know that all the facts were furnished him by me for his argument.

Q. You know that he argued the motion? A. I don't know whether he did it or Mr. Brewster did. We never dropped Mr. Brewster at all, at no time did we drop Mr. Brewster.

Q. I didn't mean that you dropped him, but Mr. Hatcher took up the activities of Mr. Brewster in that case? A. He

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assisted Mr. Brewster in that case, if that is what you mean. It was a very important matter to us.

Q. Do you remember when Mr. Hatcher was retained? A. No, I don't know when he was retained.

Q. And Mr. Hatcher was very active in this litigation with respect to the domicile of this case after he was retained? A. I have a letter here to Mr. Brewster about that where I tell him the importance of it, that your side had spent upwards of $900,000 on these cases.

Q. On what cases? A. On those that I said. I don't know where I got this information here, but the moneys
527 which have been contributed by the Winkler-Koch, amounting upwards of $900,000, were received and disbursed by the Winkler-Koch Patent Company, which also selects patent counsel to control the defense of such suits.

Q. That is with respect to all the litigation that had been started? A. Yes.

Q. 32 or 34 cases? A. That is right. So, it was a very important matter, and Globe was one member of this confederacy defending, and it was a very important matter with us that you not be permitted to force that case to trial ahead of the cases against the same company which were earlier filed in your own bailiwick.

You were trying to go out of your own bailiwick and
528 force us to a trial down in the Eighth Circuit——

Mr. Harris: Tenth.

The Witness: And we wanted to take first things first, and I don't doubt we got Mr. Hatcher out there, who was also an able lawyer, to cooperate with Mr. Brewster.

By Mr. Thiess:

Q. And with respect to this figure you have just mentioned, you are aware of the fact, are you not, that there were cases pending by Universal Oil Products, by Gasoline

Products, by Standard of Indiana, by the Texas Company, and also by the Donnelly Company, 34 cases in all in which this figure that you have mentioned was used to defend; are you aware of that fact? A. Well, that might have been, but your main one was Universal.

Mr. Thiess: I object to the last part of that answer.

The Witness: Well, anyway, that it was an enormous sum that you had, and these parties on both sides were not playing with pennies, they could afford to hire lawyers, and did. 530

Mr. Thiess: That is all.

CHARLES M. THOMAS, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thiess:

Q. Mr. Thomas, you are a patent lawyer residing in Washington, D. C., are you not? A. Yes, I am.

Q. And you have represented the Universal Oil Products Company for quite a few years, have you not? A. Ever since about 1920 or 1921, beginning as a mere solicitor of 531 patents, that is taking charge of patent applications, and subsequently to some extent working in the litigation end.

Q. Within the last eight or nine years you have been rather active in the litigation end, have you not? A. I have been active largely as a pinch hitter for Mr. Hall taking over his burdens when something happened, but I would say that I have been reasonably active.

Q. You were present during the trial of the Root case? A. I was present and participated.

Q. And you were active during the entire Root litigation, were you not? A. I put in some of the testimony and aided in preparing the briefs.

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Q. And also on the appeals and subsequent proceedings in the Root case until it was concluded? A. I was familiar with what transpired.

Q. Now, have you made a search for the memoranda, reports, correspondence, et cetera, referred to under item 1 a and b, on pages 119-20 of the record? A. Yes, I have made a search myself, and have also had a search made by my secretary, and as to Item A, I find I have no correspondence, telegrams, diaries, writings, et cetera, having to do with the employment of Mr. Kaufman in the Root case.

533 I have made no payments for or on the account of either Morgan S. Kaufman or David Kaufman, or both of them, directly or indirectly, or in any way.

My correspondence is limited to certain correspondence with Judge Haight and Mr. Kaufman which is prior to the filing of the Crew Levick case, and during proceedings in that case, and I have that correspondence, and all that I have, with me.

Q. Do you know Morgan S. Kaufman? A. Yes, I have met Morgan S. Kaufman. The first vivid recollection I have of meeting him was in connection with the arguments on certain interrogatories, or a motion for a bill of particulars here in Philadelphia in the Crew Levick case.

534 Q. When was that? A. I think that was in 1939, I believe the correspondence will show, although I do have an impression that I occasionally met him in the Universal office some time when the Root brief for filing in the Circuit Court of Appeals was under consideration, but I don't have a distinct recollection; I have an impression that I met him at that time.

Q. So, you don't remember talking to him at that time? A. No, I don't, but I have an impression that I did, but I recall distinctly meeting him when he appeared with Judge Haight in connection with the interrogatories and motion

for bill of particulars in connection with the Crew Levick case.

My recollection is that Judge Haight argued it. Mr. Kaufman considered the briefs with us, and I believe we met in New York and came down together when the briefs were completed.

Q. With respect to this Crew Levick case, Mr. Kaufman was local counsel? A. Yes.

Q. And attended to the usual local counsel activities? A. Well, he did that, and perhaps the correspondence would indicate he did a little more. He arranged for the preparation of orders and the filing of everything, and he appeared 536
on one or two occasions when we had motions.

Q. He appeared; did he participate in an active way on it? A. On one case I remember distinctly he considered the briefs with Judge Haight and I at some length before they were signed and filed. I wrote them originally, and they were corrected. Just what he contributed I can't recall.

Q. Did he take any active part in court in the way of argument or preparation? A. I don't recall that he argued anything. I wouldn't suppose that he would since Judge Haight was present on those occasions.

Q. Have you any recollection outside of these letters in the Crew Levick case of ever sending to Morgan S. Kaufman any papers of any nature whatsoever in connection with 537
the Root litigation? A. No, I am positive that I did not.

Q. As far as your recollection is concerned, what, if anything, did Mr. Morgan S. Kaufman do in the Root litigation? A. Apart from what I have stated I can add nothing to that question?

Q. Isn't it a Universal practice——

Mr. Harris: Your mean a practice of the Universal Company?

Mr. Thiess: Yes.

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By Mr. Thiess:

Q. Isn't it a practice of the Universal Oil Products Company to send copies of correspondence with respect to the various litigations to counsel who are active in the litigation, and possibly also to Mr. Halle and to some of the other officials of the company? A. Well, I can only speak for myself. I have nothing to do with the policies of Universal. My work is confined to the technical patent questions. I do receive a number of copies in connection with cases that I am interested in, but I find that I don't receive copies of
539 a great many other cases that Universal is concerned with, and I don't know that there is any uniform practice.

Q. Well, you do receive letters in the cases that you are interested in, copies of which have been sent to the lawyers that are active in that litigation, do you not? A. I think I received copies in cases which I am personally interested in.

Q. And copies of those cases are also sent to the other lawyers in it? A. Well, occasionally I see initials on a letter indicating that others are getting copies. Whether they get all the copies or not, I don't know, I have nothing to do with that.

Q. I didn't ask whether they get all the letters. I meant
540 whether the letters that you have indicated, that copies of those letters were sent to others. A. At times, and at times there is no indication that copies go to others.

Q. Now, did you know Mr. Frank L. Belknap? A. Oh, yes. He employed me in 1920 or 1921.

Q. And what is your recollection as to Mr. Belknap's presence in the Root litigation at the trial of the Root case? A. I heard Mr. Hall testify, but it is my recollection that Mr. Belknap stayed in Atlantic City during that trial because of ill health, subject perhaps to a trip or two he may have made to Wilmington, but I do not recall that he ever appeared in court.

Q. Now, with respect to Morgan S. Kaufman, when did you first learn of the fact that he had been retained by the Universal Oil Products Company as counsel in the Root litigation? A. Well, I knew that on hearsay. I will say that it is my recollection that it was either in May or probably June of 1932, when I was in Atlantic City with the rest of the staff of Universal that Mr. Belknap informed me that he had retained him, or that he intended to retain him, or something of that nature. 541

Q. And was that at the time you were preparing for the trial in the Root case? A. That is correct. We left Atlantic City and went down to Wilmington. 542

Q. And was there anybody else present when Mr. Belknap told you about the retainer of Morgan S. Kaufman? A. They may have been, I can't recall.

Q. What did Mr. Belknap tell you about the retainer of Morgan S. Kaufman? A. As near as I can recall, he said that he had retained, or was going to retain Mr. Kaufman, whom he understood was a lawyer of standing in the Third Circuit and enjoyed the confidence and respect of the courts.

Q. Did you discuss this with Mr. Kaufman any further? A. I had no discussions with Mr. Kaufman.

Q. I mean with Mr. Belknap, I beg your pardon. A. Oh, I imagine it may have been at that time or a subsequent date he informed me he was available for use if we could use him. 543

Q. Did he tell you for what purpose he intended to use him? A. Well, I understood;—I don't know whether he told me or not—that he had these litigations that were pending, and that he had brought or contemplated bringing other litigations in this circuit against Cities Service and subsidiaries of Cities Service, and that he thought Mr. Kaufman would be a useful man for the Universal.

Q. And you knew at that time, did you not, that Mr. Kaufman had no training whatsoever as a patent counsel, or had no knowledge of the refining art? A. I didn't know

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that at the time. I subsequently learned, or was told that he had been in certain patent cases at or about that time.

Q. Prior to the time he was retained? A. Well, I can't fix the exact date, but somewhere around that date. I understood he was in certain cases in Scranton, some of these Tri-Ergon cases. Whether it was the exact date or a little later, I can't say.

Q. You say certain cases; did you know of any others besides the Tri-Ergon cases? A. I didn't know whether there was more than one of them or not.

545 Q. Did you discuss Morgan S. Kaufman's retainer with any other counsel of Universal? A. No, I had nothing whatever to do with that.

Q. I mean did you discuss the fact that he had been employed by Universal with any of the rest of counsel? A. I possibly did, Mr. Thiess. I don't remember any particular instance when I discussed it.

Q. You don't remember discussing it? A. No, but I think it would have been reasonable that I had done so, particularly with Mr. Hall.

Q. But you have no recollection of it? A. No, I have no distinct recollection of it.

546 Q. Was Mr. Reichmann with you in Atlantic City when you prepared for the trial? A. I don't think so. It is my recollection that that suit was tried after the transfer had been made——

Q. What transfer? A. —or the sale of the Universal stock to Standard Oil of California, the Shell Company, and perhaps others, and it is my belief that from that time on Mr. Reichmann took no active part in any of the straight patent litigations.

Q. He was active in the Globe case, was he not? A. Yes, as local counsel.

Q. Well, he was more than local counsel in that case, was he not? A. Yes, but the reason he was there originally

was that he is an outstanding Chicago lawyer, and then we necessarily had to have Chicago counsel, and he entered the case in that way, and he continued to act, and he was active in certain parts of it.

Q. And he argued, he took testimony, and was active throughout the case, was he not? A. Oh, well, that case was divided into so many parts, as you know; on the straight patent end of it; I don't think he took any part.

Q. I am not saying there were not many parts—— A. On unclean hands he did take part in it.

Q. Didn't he take an active part in the res judicata? A. 548
I guess he did.

Q. Didn't he take an active part in the Behimer defense? A. I class that as unclean hands. I said I thought he did; no more so, though, than any other lawyers who were participating.

Q. I am not trying to say he took the leading hand in this case. All I want to say is that he was more than merely a local counsel; that is true, is it not? A. He participated in the case, yes.

Q. Now, I wonder if I could take a look at that correspondence? A. I have tried to arrange the chronology. If you will start at the bottom you will get the first dated letter.

549

Q. In going through this correspondence I notice that Mr. Kaufman has a Philadelphia address. Is that an office that he maintains in Philadelphia? A. I have never been in it, I don't know anything more than the correspondence shows.

Q. Now, this correspondence also refers to an Empire case. That was the case of Universal vs. Empire filed in what court? A. That is pending in the District Court in Wilmington.

Q. And who was your local counsel in that case? A. Judge Morris.

550 *Charles M. Thomas—For Amici Curiae—Direct*

Q. Did Mr. Berl have anything to do with that case? A. I don't think Mr. Berl entered his appearance in that case, I am not sure.

Q. And are the patents that are being sued on in the Crew Levick case the same as the ones in the Empire case? A. Let me see the bill, maybe I can tell you.

(Papers were shown to the witness.)

The Witness: I know in both suits the Dubbs patent 1,392,629, known as the clean circulation pat-
551 ent, is in suit. I don't know whether the Egloff patent is in suit in the Empire case or not. It doesn't appear to be in suit in the Crew Levick case. Both of those companies are subsidiaries of the Cities Service, but we found after a great deal of study that they were operating companies and we would have to sue them as operating companies and could not sue the Cities Service Company, which was the holding company.

By Mr. Thiess:

Q. Both of those cases were filed at the same time, were they not, in 1936? A. Well, the very first of 1936. I think
552 the bills were prepared in 1935, or the latter part of 1935.

Q. And the cases moved at about the same rate, did they not, as far as interrogatories—— A. That was a matter that Judge Haight and I decided. It is my recollection that Mr. Halle was very insistent on pushing the Crew Levick case. Because of certain defenses we decided at one time—Judge Haight and I—that we would first get a ruling on the interrogatories and bill of particulars in the Empire case and then present the same pleadings in the Crew Levick case.

Q. Is that true also of the activities in these two cases that the matters were first presented in the Empire case and

then the Crew Levick case? A. I don't know whether we later decided that we would push the Crew Levick case. I think we did. But when we reached that decision, all proceedings in this court had virtually been stayed because of our willingness to place these patents in jeopardy first in the Tenth Circuit and then in the Seventh Circuit, and at the present time both the Crew Levick and the Empire cases are off the calendar pending the final outcome of the Universal-Globe case in the Seventh Circuit.

Q. That wasn't done until February of 1941, was it? A. That was the Crew Levick, it was dismissed for want of prosecution. It was inactive for a number of years, and 554
then we had it reinstated on the date you indicated. As to the Empire case, it is my recollection that we had it removed from the calendar several years before, and that, too, was inactive for some years before we actually removed it from the calendar to prevent dismissal.

Mr. Harris: Mr. Thiess, that case was reinstated in 1941 or 1942.

By Mr. Thiess:

Q. 1941 or 1942, wasn't it? A. The record will show, Mr. Thiess, that there was no activity in the Crew Levick for a number of years when we were prosecuting the case in the 555
West, and the Court dismissed it for want of prosecution, and it is my recollection Judge Morris and I appeared at the date you indicated and had the case reinstated.

Mr. Morris: I thought it was 1942, but I may be wrong.

By Mr. Thiess:

Q. I have a copy of the docket entries in those two cases. Possibly that will help your recollection. A. What do you want me to tell you?

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Q. As to when you filed the stipulation passing the cases in both of those cases. A. According to this entry in the Empire case the stipulation was entered into on February 19, 1941.

In the Crew Levick case the stipulation seems to have been presented on November 21, 1941, but as the entries will show, there was no activity to speak of in those cases for several years prior thereto.

Q. Was there ever any great activity in those cases? Was there any real activity in those cases? A. Well, I don't know what you mean by "real". We had several
557 very bitter arguments on interrogatories, and a motion for bill of particulars where the defendants claimed title to the patents in suit, or one of them, and it was with considerable difficulty that we got the papers upon which they based their claim.

Q. And that activity occurred in what year? A. I can't tell you.

Q. Can you tell me from these documents? A. I would hesitate to do so.

Q. Now, with respect to this Crew Levick case and the Empire case, my associates and I were not attorneys for the defendant in that litigation? A. You didn't appear of
558 record, but I know you consulted with the Doherty interests, and I know the Doherty interests paid a certain amount of expenses for experiments that you conducted to be used in other cases.

Q. Well, I was not of record in that litigation and did nothing in that litigation? A. No, you did not make a formal appearance, but I have certain documents where the Doherty interests, which were behind Crew Levick and Empire, did aid and assist you, and did contribute toward the expense of a number of very large experiments that you made for use in your cases, and which I assumed they were going to use in their cases.

Q. Do you have any recollection of who the attorneys were for the defendants in those two cases, the Empire and

Crew Levick? A. Well, I think the cases are in the control of Pennie, Davis, Marvin & Edmonds. I told you who the local attorneys are. Dean Edmonds has handled the arguments that I have attended.

Mr. Thiess: That is all.

Mr. Harris: May I look at the correspondence produced by Mr. Thomas, and after lunch offer some of it for the record?

Mr. Thiess: I would like to say that if any of that correspondence is to go in, I think it all ought to go in. 560

The Master: That can be determined. You are through with Mr. Thomas, are you?

Mr. Thiess: Yes.

Mr. Harris: Mr. Hall would like to make one short correction before he leaves, if that is agreeable.

The Master: Yes.

Mr. Hall: I heard Mr. Thomas say he had no recollection that Mr. Belknap was in attendance during the trial of the Root case.

My recollection as to that may have been based upon a much earlier trial that took place in the same court. When I was testifying I was kind of visualizing Belknap being at that trial occasionally, and it 561 is quite possible that it was in the case of Universal vs. Skelly, a suit on the Trumble patent, that he came in on two or three occasions and sat at the trial table, and not in the Root case.

But, in general, he participated in neither case in the actual trial, but would meet counsel at other times and discuss it more or less.

The Master: We will suspend until 1:30.

(Recess, 12:25 until 1:30 o'clock P. M.)

AFTER RECESS

PRESENT: Counsel as before noted, and ARTHUR G. LOGAN, Esq., one of the amici curiae.

Mr. Logan: Mr. Master, may I enter my appearance this afternoon?

The Master: Yes.

Mr. Logan: I am sorry I couldn't be here this morning, and I have to ask permision to leave early.
563 I am engaged in the preparation of a case to present to the S. E. C. tomorrow, and won't be able to be here tomorrow.

Mr. Thiess: I think it might be well to have the record show that the reason that Judge Denison and Mr. Von Holst are not present at this hearing is because of illness.

Mr. Harris: Certainly.

Your Honor, I ask to have marked in one group as Universal Exhibit 2 the correspondence produced by Mr. Thomas.

(A file of correspondence consisting of forty
564 pages and comprising letters, copies of letters, and a copy of a radiogram, was marked Universal Exhibit 2.)

HUGH M. MORRIS, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Mr. Thiess: Before we proceed with Judge Morris, regarding the two letters which have been offered as Amici Exhibits 1 and 2, will it be satisfactory to stipulate that these exhibits which Mr. Hall produced here

were given to the Universal in 1937 in connection with the res judicata hearing in the Universal versus Globe case?

Mr. Harris: Well, I don't know, Mr. Thiess. Mr. Hall has gone.

Mr. Thiess: It appears right on there.

Mr. Harris: Don't they speak for themselves?

Mr. Thiess: Well, I would like to have that agreement with you subject to correction, if that is not correct.

Mr. Harris: All right, I will verify it by speaking to Mr. Hall about it. 566

By Mr. Thiess:

Q. Judge Morris, have you made a search for the memoranda, records, correspondence, telegrams, et cetera, referred to under items I-A and B, pages 119-20 of the record? A. I have, and I have had one or two of the clerks in my office check, and there are none.

Q. When did you resign as United States District Judge? A. June 30, 1930.

Q. Subsequent to that you entered the practice of law in Wilmington, Delaware? A. I did.

Q. When were you retained by the Universal Oil Products 567
Company? A. I think it was the evening of June 30th, 1930, as I recall it. That is almost twelve years ago, but my recollection is that Judge Haight came out to my house that evening and told me he wanted to give me the first case, and that was Root Refining, as I recall it, and my recollection is—and I am reasonably clear and positive—that it was the night of June 30, 1930.

Q. And Judge Haight retained you in that case? A. He did.

Q. At that time did you know Mr. Belknap? A. If I had ever seen him or heard of him, it had been in connection

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with some case in court, and I had no recollection of Mr. Belknap.

Q. Do you know Morgan S. Kaufman? A. I have met Mr. Morgan Kaufman, and I have seen him probably five or six times.

Q. How long have you known him? A. I have been trying to recall, and I have an impression or recollection that the first time I ever heard of Mr. Kaufman was at a dinner given in the Bellevue-Stratford by Judge Buffington, I think just prior to or shortly subsequent to his last mar-
569 riage. I have looked up the date of his marriage, and if my memory serves me right, it was January 1, 1930.

Q. That is Judge Buffington's last marriage? A. Yes; and I am under the impression that he was at that dinner. Now, just how close it was to January 1, 1930, I don't know, but it was somewheres around there.

Q. Have you any recollection of the next time that you saw Morgan S. Kaufman? A. May I look at a memorandum here?

Q. Yes. A. I think I can tell you, probably. I think it was on May 2, 1933.

Q. What was the occasion that you met him at that time, do you remember? A. I fix that this way: I should say I
570 have no recollection of seeing Morgan Kaufman from the time of Judge Buffington's dinner until May 2, 1933. May 2, 1933, was the date I argued an appeal in the Masonite-Celotex case before the Circuit Court of Appeals. I recall an incident that happened on that particular day, that Morgan Kaufman was in the court room at that time.

Q. Have you any recollection of the other dates that you met him? A. Yes. Another time I saw Morgan Kaufman was on, I think, the 29th day of September, 1933, at Lewisburg, Pennsylvania. I had been engaged or retained by Mortimer Ward and his associates as representing the Amer-

ican Tri-Ergon Corporation versus Altoona Publix Theatres, Incorporated.

The case had been brought some time before I was employed or retained. There was a question involving a matter of treaty, and Mortimer Ward's associate, Page S. Haselton wrote me a letter on the 15th day of April, 1933, stating that the case was set for trial on June 12, 1933, and asking me my opinion as to the advisability of raising this treaty question in the pending suit in the Third Circuit.

I think I was not at the trial—I am quite positive of that—but I was there, and, as I recall it, took part in the argument at Lewisburg. My records show it was on September 572
29, 1933.

Morgan Kaufman, as I recall it, was in that case, the local counsel.

I have no recollection of seeing him in court on the day that case was argued. I have a recollection of seeing him outside the court house or court room, whatever it was, when we came out. My recollection is that he had a car there and suggested that any place we care to go he would be very glad to take us.

Q. Do you have the other instances there when you met Morgan S. Kaufman? A. I don't have them as such, Mr. Thiess, but I think I can get them. I think I saw him in 573
March of 1933, probably around the third, fourth or fifth in connection with the suit of the Stationery Manufacturing Company of Chicago versus S. W. Straus and Company, Incorporated, which was a suit in Delaware.

Shortly after that—and I haven't the date—I saw him in the Ambassador Hotel in New York, if that was the name of the hotel—I think it was—which was owned by the S. W. Straus and Company, or some of the affiliated companies of which he was then one of the receivers.

Q. He was living at this hotel? A. I can't say just exactly whether he was living there. I got the impression he

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was staying there; how much, I don't know, but he was there at that time.

Q. And in this Straus litigation he was the receiver? A. He was one of them.

Q. Have you got the other dates that you may have met him? A. If you will give me just a moment I think I can recall. I haven't any memorandum as such. He may have been in the office in Wilmington later in connection with the Straus case. I have no recollection of seeing him, and don't know that I have seen him at any other time or dates than those I have given you.

575 Q. When you say in the office, you mean in your office? A. In my office.

Q. When did you first ascertain that Morgan S. Kaufman had been employed by Universal Oil Products Company in the case of Universal versus Root? A. Refreshing my recollection from the entries in my books, the expenses to Atlantic City in connection with the Root Refining Company were charged up as of the 17th day of June, 1932. I am quite sure that is correct because of the correspondence indicating that I was engaged in the trial of a case in Connecticut that week, and would not be able to attend the entire conference that week, but would probably be there the latter
576 part of the week, and my recollection is the 17th was Friday. That is the first time that I recall, and I am sure is the first time I heard Morgan Kaufman——

Q. Those entries don't relate to Morgan Kaufman? A. No. I was looking for dates, and found that I had expenses charged for a trip to Atlantic City in connection with Root Refining just once, and that was on the 17th day of June, 1932.

Q. And who told you about Morgan S. Kaufman's retainer? A. Mr. Belknap.

Q. Do you remember what he told you? A. I will give it to you the best I can.

First let me say this, Mr. Master. When I got the first papers filed in this case by you in the Court of Appeals——

Q. By this case, you mean the Root case? A. I mean papers in connection with the Morgan Kaufman matter. When I got those papers I had no recollection of ever having heard of Morgan Kaufman in connection with the Root Refining case. I called up Judge Haight and told him I had these papers, and, in effect—I can't even quote those words—this is curious because Morgan Kaufman had no connection with the Root Refining case, as far as I know, and I don't remember exactly Judge Haight's answer, and still the fact that I had heard of Morgan Kaufman in connection with 578
the Root case didn't come back to my memory at all, and I told Judge Haight that they were before the Circuit Court of Appeals, and Judge Haight then said to me, "Don't you recall the trip to Atlantic City and the conference there a short time before the trial in Wilmington, and Belknap told you that he had engaged Morgan Kaufman, and wanted to know whether you wanted him on the brief in Wilmington?"

Even then at the moment it didn't come back, but then as I looked at my correspondence in regard to the trip to Atlantic City I can see part of that picture. Mr. Belknap told me that he had engaged, was engaging, or intended to engage—and what tense he used, I don't know—had retained 579
or was retaining or was about to retain Morgan Kaufman, that he would be available for any work we might want him to do in connection with the Root Refining case, and he asked me if I wanted him on the brief——

Q. In the court below? A. In the court below. My answer was that I did not, that there was no need of adding others to the list who were already on the brief, and I saw no reason for adding anybody to the list of persons.

Q. And this discussion was with Mr. Belknap?

Mr. Harris: I don't know whether he is finished.

Mr. Thiess: I beg your pardon.

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A. This discussion was with Mr. Belknap.

By Mr. Thiess:

Q. Had you finished, Judge Morris? A. No.

Q. Go ahead. A. My impression, as I recall it—and it is ten years, and I know this impression may be erroneous, but the impression which I have is that Mr. Belknap stated that when the Root case was finished he expected to bring some cases in Pennsylvania, and that he wanted Morgan Kaufman to act as counsel in those cases.

581 Now, as I say, that is ten years ago; that is the best recollection I have of it. I can't say, Mr. Master, that that is all recollection, it may be mixed with possibly some inference, and yet in my own mind I haven't any doubt after thinking it over a great deal that that is what occurred.

Q. As I understand your testimony, you had no recollection until Judge Haight sort of refreshed it in this telephone conversation? A. That's right.

Q. Were any other lawyers present or anybody representing the Universal Oil Products at the time that you discussed this question about putting Morgan S. Kaufman's name on the brief in the District Court? A. Judge Haight must have been present because he refreshed my recollection about it, 582 and it was a case of refreshing my recollection because I do recall it after his answer. Mr. Thomas' testimony this morning coincides so fully with what I recall that I think he must have been present, although I don't recall for certain that Mr. Thomas was there.

Some time on that day Mr. Hall left—whether it was before or after this talk with Mr. Belknap, I don't know—to go down to whatever his hotel was, to go to work in preparation for the trial of the case.

Q. Then as far as you remember, Mr. Hall was not present at that time? A. I can't say whether he was or was not.

because I don't recall whether he left before or after this conversation.

Q. Do you know why it was that this question of names on the brief in the District Court was brought up at that time before the case had even been tried? A. No, I don't. All I recall is that Mr. Belknap stated that he would be available for any work that we wanted him to do, that Mr. Morgan Kaufman would be available for any work that we wanted him to do, and then we were preparing for trial. That was the 17th day of June, as I recall it, 1932. The trial began on the 21st of June, and lasted until July 28th, 1932. So, I suppose we were considering preparing briefs at that 584
time, I don't know.

Q. Well, the briefs were not prepared until long after that? A. Whether there was a trial brief being prepared or not, I just don't know.

Q. You have no real recollection of why the question of the briefs should be brought up at that early date, the names of counsel on the briefs? A. No, I haven't, Mr. Thiess.

Q. And no trial brief was submitted to Judge Nields? A. I have no recollection of it.

Q. Since your retainer in this Root litigation, you have always been active in this litigation, haven't you? A. To a certain extent, not comparable to Mr. Hall or Judge Haight. 585

Q. But you were quite active in the trial of the case, were you not? You were present during the trial? A. I think I was present throughout the trial, wasn't I? And I had the record, the transcript of the evidence furnished, and the only thing I can find that I did was examine one witness.

Q. And you were also present at the argument on appeal, were you not? A. Yes.

Q. And the argument in the lower court? A. No, I was not; and I had a jury case that conflicted, and I had to go to the jury case.

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Q. You remember in the argument before the Court of Appeals you did take some part in making some statements? A. I am told so, and yet while I recall being there that day and one or two things that happened, strangely enough, I do not recall, even though I have been told that I did start to make an argument and that Judge Buffington stopped me, I don't happen to have any recollection about it.

Q. After you had been advised by Mr. Belknap about Mr. Kaufman's retainer in the Root case, did you have any further conversations with him, or any of the other counsel in the Root case about Mr. Kaufman's retainer? A. As far as
587 I know, it was not mentioned to me or by me to any other counsel in the case.

Q. Did you ever discuss with Morgan S. Kaufman the fact that he had been retained by the Universal Oil Products Company? A. I will have to give you an impression again—and I can't say it is more than an impression, I can't say that it is memory, but I think this is right—when we argued the Tri-Ergon case at Lewisburg——

Q. That was when? A. On the 29th day of September, 1933, my impression is that Morgan Kaufman at that time asked me how we were getting along in the Universal cases, and I don't know whether he said Universal cases, or Root
588 cases, or what, but he made inquiry about that, it is my impression.

I do not recall my reply to him, I am unable to bring it back, but I am under the impression that he mentioned it just casually at that time.

Q. Now, in this Straus case that Morgan S. Kaufman was the receiver, you were counsel for the receiver, is that right? A. That's right, for the receivers, there were two.

Q. That is right, for the receivers, and didn't you meet Mr. Kaufman in connection with that? A. No, my associate, Mr. Nichols, attended to it practically entirely, and the only time that I recall having anything in connection with

it was the one visit to New York, and I don't think I went over to New York in connection with it except that one time. Mr. Nichols attended to it.

Q. Mr. Nichols is somebody in your office? A. That's right.

Q. The argument in the District Court in the Root case was had on April 20 to 22 of 1933, was it not? A. The argument in the Root case?

Q. In the District Court. A. Was when?

Q. April 20 to 22, of 1933. A. That is my entry, yes.

Q. Did Mr. Kaufman ask you as to what happened at 590
this argument when you saw him in September of 1933? A. I have no recollection at all with regard to it other than what I gave you, Mr. Thiess, and that is an impression, and I haven't any clearer recollection than that.

Q. And you don't remember, either, talking to him about this argument when you met him in March or in May of 1936? A. The only time I have even the faintest recollection of talking to Morgan Kaufman about it was the impression that I gave you that he mentioned it after we left the court room in Lewisburg.

Q. He told you he was retained in the Root case, did he? A. I don't know exactly what he said. He made some inquiry about it, what was being done, or how it was going on; or 591
something to that effect.

Q. But you don't recollect that he told you he had been retained? A. I don't know whether he said that he had been retained or not. My recollection about that is very vague, but it seems to me that he did talk about that he was interested in those cases, or something to that effect. Now whether that was Root or Universal, I don't know.

Q. You didn't discuss it with him in view of the fact that you knew he was retained in this case? A. I think the whole thing occurred when I was walking across the street, and it

was late in the afternoon, and I don't think the whole thing took half a minute.

Q. And at no time when you met him on any of these occasions when you met him did you discuss that with him? A. I have no recollection of it, Mr. Thiess.

Q. Now, you know, do you not, Judge Morris, that Judge Woolley maintained his office in Wilmington, Delaware; that is correct, isn't it? A. Until recently, I think until sometime this year, a short time ago.

Q. Do you know how long it has been that Judge Wool-
593 ley, in view of illness, has not been active on the appellate bench of the Third Circuit? A. Mr. Berl and I were trying to bring that to our recollections at luncheon, and at least I wasn't successful in bringing to mind exactly when that occurred.

The Master: The Clerk of the Circuit Court could give you that.

Mr. Thiess: Yes, we will get that. That is all the questions I have for Judge Morris.

Mr. Harris: No questions, Mr. Master.

By the Master:

594

Q. Judge Morris, your work had nothing to do with the policy of retaining or not retaining Mr. Kaufman? A. Oh, not at all.

Q. And you didn't know anything about what he was expected to do or not to do, I suppose? A. No, other than I think I said I got an impression that he was retained in anticipation of suits to be instituted in Pennsylvania, and that he was available for any work that we wanted him to do in the Root case.

The Master: All right, that is all, then.

By Mr. Thiess:

Q. Just one more question, Judge Morris. I believe it is perfectly apparent from the record so far, but I would just like to ask you this one additional question: Did you at any time ever send anything to Morgan S. Kaufman pertaining to the Root litigation? A. Nothing of any character at any time in any way, so far as I know or my records show.

Mr. Thiess: That is all.

Mr. Harris: Mr. Thiess, do you concede without my offering evidence of it that Mr. Hall was not counsel of record in some of the earlier briefs in the Root 596
case in the trial court?

Mr. Thiess: Well, I concede this: I understand in this situation Mr. Hall was not of record in the first group of cases filed, and that first group of cases did not include this Dubbs 629 patent directed to clean circulation; that later when the second group of cases were filed Mr. Hall was of record.

Now, I may be mistaken on that, but I know for awhile he was out of the case, and then he was put back.

Mr. Harris: I don't even know what you mean by "of record". 597

Mr. Thiess: I mean his name appeared of record in the case.

Mr. Harris: You mean in the briefs?

Mr. Logan: On the complaint, because an out-of-town counsel would not appear of record in the Delaware Court; they usually put the name of counsel on the complaint.

Mr. Thiess: He would appear of counsel in the motions and briefs that were filed.

Mr. Harris: I call your attention to memoranda that were filed in the Root cases where his name does not appear.

598 *Colloquy*

Mr. Thiess: Let me see what those things are. These are the first set of cases.

(Papers were shown to counsel.)

Mr. Thiess: Yes, as I understand it, these two memoranda were filed by plaintiff on the interrogatories in the first set of cases filed, and as I remember, and I think Judge Morris will verify this—that the argument on the Interrogatories in this first set of cases was handled by Judge Morris. He argued those. Do you remember that? I remember it very distinctly
599 because it is the first time I met Judge Morris.

Mr. Harris: But, nevertheless, Mr. Thiess, Mr. Hall was active in these first cases in spite of the fact that his name does not appear on these briefs.

Mr. Thiess: That I don't know, but I think he was.

Mr. Harris: Mr. Logan advised me that he was.

Mr. Thiess: I am not quite sure he was.

Mr. Logan: Mr. Harris, I think I can state without any question that Mr. Hall's name appears on the complaint in the first group of cases.

Mr. Harris: And he was also active in these first cases.

600 Mr. Logan: The complaints were filed in '29. It is my recollection that for a while he became inactive shortly after Judge Morris was engaged and came off the bench.

Mr. Harris: One of these briefs which doesn't contain Mr. Hall's name as of counsel has the legend 7-29-31. Would that indicate, Mr. Thiess, that the brief was filed about that date, or do you have a recollection as to whether it was in or about that month?

Mr. Thiess: I think it might have been about that time, I couldn't say. I know——

Mr. Harris: I would just like to fix the time generally, that is all.

Mr. Thiess: Maybe we have something here to show this. Our records show that the hearing on these interrogatories in the first set of Root cases was on July 20, 1931, and this date that you have here is 7-29-31. So, I think that is correct.

Mr. Harris: It is also conceded, Mr. Thiess, isn't it, that Mr. William Whitney's name did not appear as counsel in the Circuit Court of Appeals briefs in the Root cases?

Mr. Thiess: Well, as far as we are aware, we didn't even know that Mr. Whitney was in any of these cases. I didn't know that he was present at the 602
trial until I had read some of this testimony that had been given in these criminal cases which indicated that he was there.

Mr. Harris: So, it is your recollection his appearance was not noted at the trials, either?

Mr Thiess: No.

Mr. Logan: I think, Mr. Harris, I can state my recollection is Mr. Whitney did come down at the beginning of the trial.

Mr. Harris: There was testimony on that, Mr. Logan, this morning.

Mr. Logan: Oh, there was? At which time, I 603
might say, a good many other Universal people appeared, but he did not enter his appearance, and took no part.

Mr. Harris: There was no testimony on that subject this morning.

RICHARD E. DWIGHT, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Mr. Harris: Before Mr. Dwight testifies, Mr. Master, I would like for it to appear that Mr. Dwight

604 *Richard E. Dwight—For Amici Curiae—Direct*

is my law partner, and if there is any violation of the canon of ethics, I will retire from the room and let Senator O'Mara represent our client.

Mr. Thiess: I don't think that will be necessary at all, Mr. Harris.

Mr. Morris: May I be excused, Mr. Master?

The Master: Yes.

Mr. Thiess: Thank you very much, Judge Morris.

By Mr. Thiess:

605 Q. Mr. Dwight, you are a practicing attorney in the State of New York? A. Yes, sir.

Q. And what is the name of the firm? A. The present name is Dwight, Harris, Koegel and Caskey.

Q. And as a member of that firm you have acted as attorney for Universal Oil Products Company? A. As one of them, yes.

Q. For how long a period has that been? A. Since January, 1931.

Q. Are you also a director of Universal Oil Products Company? A. I am.

Q. How long have you been a director? A. Since the same date.

606 Q. Have you made a search for the documents enumerated under item 1-A and B, page 120 of the record? A. I have.

Q. Can you produce whatever you may have found? A. I have found nothing.

Q. You have found nothing? A. The only thing I can produce is my own office diary initialed by me from which I am able to fix a date of the only thing I ever had to do with this whole matter. That was September 12, 1935.

Q. 1935, did you say? A. Yes.

Mr. Harris: Do you want his entry, or what?

By Mr. Thiess:

Q. What is the entry in the diary? A. The entry in the diary is conference, Halle, in the morning and afternoon with respect to policy on Root decision, and payment to counsel, and discussing policy with respect to future litigation and method of handling brief and opposition to petition for writ of certiorari for the Supreme Court:

Q. And who was present at this conference? A. Judge Haight, Mr. Halle, Mr. Whitney and myself.

Q. Have you any recollection as to what the discussion was with respect to the opinion rendered? A. Yes. I might 608
say in explanation, Mr. Master, that Universal Oil Products Company voting stock is controlled equally by Shell Union Company and by Standard of California. The reason I happen to be in the picture is that we are counsel for Standard Oil of California, and it being very inconvenient for them to serve in California, they put me on the board and made me the goat, and I have never participated in any litigation on behalf of the Universal, and that is particularly true of patent litigation. We are not a patent office, although we argue patent cases on appeal sometimes as general lawyers do.

Q. You represent Universal generally, though? A. Equally with Cravath's office. Mr. Whitney at that time 609
was the partner in Cravath's office who represented them, and I was the senior in my firm, and I represented our side of it, and we have a rather peculiar set-up there. Both Shell Union and California have to agree to take any action. If they don't agree no action is taken.

I was called in from time to time, however, when questions of policy came up. The reason for that is quite obvious. They possibly have to go to a board of directors' decision, and if any law is involved in it both Shell Union and Standard of California would expect us to give our opinion or judgment in the matter, and this was one of those con-

ferences, and questions of payments to counsel. There were questions of suits, where we should strike next in the Root case, and who should go on the briefs and how we should handle this opposition petition. We weren't allowed to argue, as you know, it was just a question of policy as to whose name was to be put on the brief in opposition to the petition for certiorari.

Q. What discussion, if any, did you have at that time with respect to the opinion rendered in the Root case? A. I don't quite understand what you mean.

Q. Doesn't your entry say something about the opinion?
611 A. Policy on Root decision, I mean policy as to how we should take advantage of it, and what we should do, which next infringer we should go after.

Q. Did you have a copy of the decision before you at the time? A. Well, we didn't have it before us then, but I had a copy of the briefs and I read it, of course.

Q. And you discussed the decision at that time? A. We discussed what we were to do, the policy we were to pursue in view of the decision.

Q. Now of course, in view of those circumstances, the decision was discussed, was it not? A. I don't think so. I don't exactly know what you mean by "the opinion was
612 discussed".

Q. You referred to the opinion. A. We knew that we had won the case, we felt it was a great victory. It would affect very importantly the policy of the company with respect to enforcing that decision against other infringers, of whom there were a large group, as Mr. Hall calls it, a confederacy.

Q. Could I see that entry? Which one is it? A. At the bottom of the page under the heading Universal Oil Products Company.

Q. Have you a recollection a little more in detail just what was said by the various parties at that meeting? A. Yes. The question of Mr. Kaufman's fee came up.

Q. Yes. A. Mr. Halle and Judge Haight told Mr. Whitney and I that Mr. Kaufman had been under a general retainer for about three years and a half, and——

Q. At that time did you know Mr. Kaufman had been retained by the Universal? A. No.

Q. Is that the first you heard of it? A. The first I ever heard of it. The first time I ever heard Mr. Kaufman's name was on that date.

By Mr. Harris:

Q. September 12, 1935? A. September 12, 1935. 614

By Mr. Thiess:

Q. Will you continue with your recollection of the substance of the discussion? A. Mr. Halle and Judge Haight told Mr. Whitney and myself that Mr. Kaufman had been on a general retainer with the company for three and a half years, that he had been engaged by Mr. Belknap before they knew about it.

As you heard Mr. Hall testify, Mr. Belknap was the field marshal of the patent litigation and retained anybody he saw fit, and I don't remember anybody ever questioning his judgment in those matters. As far as I am concerned, I have a very high respect for his judgment, and if he thought Kaufman ought to be retained, I would agree with him without knowing anything about it. 615

He told us that Mr. Belknap had promised he would be liberally compensated, which I don't doubt is true, because he told everybody that, and Mr. Kaufman had been in and asked for $10,000 a year retainer for the three and a half years.

Mr. Halle reported to us that he told him he wouldn't recommend that, but he would be willing to recommend $25,000, which would be about $7,000 a year retainer.

We asked Judge Haight what, if any, use had been made of him, and he said practically none. I think Judge Haight said he had sent the briefs in the Root case to him, but it was practically solely a question of retainer.

Q. Did——

Mr. Harris: Let him finish.

The Witness: We asked Judge Haight if we had any use for him. He said yes, he had been retained primarily because we expected to bring some important litigation in his bailiwick.

617

By Mr. Harris:

Q. Kaufman's bailiwick? A. Kaufman's bailiwick, and Mr. Belknap retained him for that purpose. He had a great respect for Belknap's judgment, too.

I might say the reason these things came up any legal matter came before the board, I was on the board, and Mr. Whitney's clients looked to him to advise them.

And we said all right. It met unanimous approval, we felt that $25,000 was all right to pay him, and we would approve it, and we also approved on Judge Haight's suggestion, and in view of Belknap's purposes in retaining him originally, we felt we ought to get some use out of him, and

618

we approved his being retained in the Crew Levick case for future work.

By Mr. Thiess:

Q. Did you ever meet Mr. Kaufman? A. I have never met him in my life.

Q. You were told at that meeting, were you not, by Judge Haight that Mr. Kaufman had not done anything in the Root case? A. That is practically nothing. I am telling you my present recollection is the only thing he had done at all—I don't know as he had done anything, but he sent him the

briefs for any comments he might make, but he hadn't contributed anything.

Q. Did Judge Haight send him the briefs? A. Yes, in the Root case.

Q. Was anything else said to Mr. Kaufman? A. I don't know. I only know what I was told.

Q. And at the time you had the conference was it decided to retain Mr. Kaufman in other litigation? A. Not in other litigation. He had been retained generally for all litigation we wanted him to appear in, but we decided to retain him in the Crew Levick case and the case we decided to bring against Cities Service. 620

You recall Mr. Hall said we didn't press those suits because we wanted to go out west. I think you wanted us to go out west as far as that is concerned.

Q. At that time did you discuss the amount of his retainer in this Crew Levick litigation? A. Yes. The first retainer was to be $10,000, and then he was to be paid from time to time, but we didn't discuss the future, as I recall it, except this $10,000 retainer which was to be for the next year, or the end of that year, I have forgotten.

Q. And that $10,000 was to be paid him as local counsel in this litigation? A. I don't know the difference between local counsel and counsel. His name appeared on some pleadings. I suppose some local counsel do all the work and some do very little. I have been local counsel myself, and I do all the work. 621

Q. Now, with respect to this entry you have told us what was discussed with respect to the payment of Morgan Kaufman. A. Yes.

Q. Do you remember the discussion with respect to the policy in the Root decision that you have an entry here for? A. Well, that was more or less bound up with the Crew Levick case; I mean I think Mr. Halle—the idea was we should immediately proceed in the Crew Levick case, push it. I

622 *Richard E. Dwight—For Amici Curiae—Direct*

might add we hadn't filed our complaint in the Crew Levick case yet because we hadn't completed the transfer of our patents from the South Dakota company to the Delaware company, and we were afraid we would get mixed up in a situation like you tried to get us mixed up in.

Q. Who attended to that transfer? A. Who attended to that transfer?

Q. Did your firm attend to that work? A. No, I think Mr. Behrens did most of the work. Of course, we saw the papers. In all these things, Mr. Thiess, as far as my firm is concerned and myself is concerned, we just acted as consult-
623 ants in connection with the papers submitted for our approval, questions of policy were taken up, and then I would explain the matter to the board.

Q. Was payment to any other counsel discussed at this meeting? A. Oh, yes, we discussed Judge Haight's, but they had been paid right along.

Q. What was the discussion as to the payment of those? A. I don't think we had much discussion, I think Mr. Halle told us what he was going to pay, and that is all.

Q. Do you remember what that was? A. Judge Haight's?

Q. Well, no. What discussion did you have with respect to the payment of other counsel at this meeting? A. Well,
624 I think, as I told you, the discussion was mostly being told what they were being paid.

Q. Don't you know the substance of it more in detail? A. I don't know as I do. I think I remember what was paid Judge Haight in addition to what they had received prior to that, but I can't charge my recollection with all the different amounts.

Q. At that time did you discuss the payment of all counsel in the Root case? A. No. Some of the counsel were on a different basis. Mr. Hall calls his a retainer. It wasn't really that, it was a guarantee. We guaranteed him so much, and then he billed for whatever he did. It might be three

times as much as the guarantee, and if he didn't do any work at all he was paid just the guaranteed amount, so we didn't have any discussion about him, naturally.

Q. Give us the discussion with respect to other counsel at this particular meeting. A. I don't see how I can make it any clearer. Mr. Halle told us what fee he was going to pay certain counsel.

Q. Can you tell us what that is? A. I can't give you but one, I think, Judge Haight's. I will have to be corrected if I am wrong, but I don't know whether I could tell you. It is Judge Haight's business. It was several times what they paid Mr. Kaufman. 626

Q. At this meeting you didn't discuss the fees to be paid all of the counsel in this Root litigation? A. No, because some of them were fixed already, like Billy Hall's. No, we did not. I told you what my recollection is with reference to practically all things of that kind Mr. Halle would confide in us what he was going to pay, and that was all there was to it. The only one there was any discussion about, notwithstanding my memorandum, was Kaufman, and that was because we were not paying him what he asked for his fee.

Q. That is the reason I asked. The entry is rather broadly inclusive. A. Yes, it is. 627

Q. It says payment of counsel. If the question at that meeting was the discussion of what you were to pay Mr. Kaufman, I think the entry would have so stated. That is why I asked you who the other counsel were that you discussed. A. The expenses of the suit were discussed.

Q. Who were other counsel besides Judge Haight? A. Judge Haight was the principal one.

Q. Judge Haight and Kaufman? A. I don't think Judge Morris had submitted any bill at that time.

Q. And he wasn't discussed? A. I don't think we discussed his counsel fee, and we didn't discuss Mr. Hall's, or

628 *Richard E. Dwight—For Amici Curiae—Direct*

Billy Thomas, because they were on the regular staff, practically speaking. The best I can recollect is practically Judge Haight and Kaufman, although I don't know, there may have been others.

If you make memorandums for your office diary, I have no doubt you will find some that are just as blind as that. I don't charge myself particularly. I really kept the diary principally to know the subject and the amount of hours I spent so when we make up our bill to Universal I have that information. I don't make them for the purpose of
629 refreshing my recollection as a witness.

Q. I thoroughly appreciate that, Mr. Dwight, but what I had in mind was this: if this meeting was called primarily to discuss Kaufman's payment I should think the entry would have shown it.

Mr. Harris: Your Honor, I think Mr. Thiess has gone far enough on this.

The Witness: Let me explain.

Mr. Harris: Pardon me, Mr. Dwight.

The Witness: I want to tell him this meeting was called primarily to discuss the policy with respect to the Root decision. That is what we went up there
630 primarily for, and the Kaufman question came up incidentally. That is the reason for the minor emphasis given to the payment of counsel.

By Mr. Thiess:

Q. And as far as the policy of the Root decision is concerned, as I understand your testimony, that was directed primarily to the other suits that you were going to bring. A. What suits we should press. We had a dozen suits pending all over the country, and what suits we should press. We only had a limited staff, and we couldn't try more than one case at a time.

Q. Do you remember what suits you decided you wanted to press at that time?

Mr. Harris: Isn't this going just a little far afield, Your Honor?

The Master: Yes, I think that is a little bit off the point.

The Witness: I told him that it was——

The Master: As to what the general policy was regarding other suits, or what was done in other suits doesn't seem to me to bear on this question.

Mr. Thiess: It is a proposition of ascertaining 632
just what occurred at this meeting of September 12, 1935, where these gentlemen met and had this discussion, and it seems to me that whatever was discussed at this meeting is pertinent to this issue.

Mr. Harris: Your Honor, it seems to me that here is produced a diary contemporaneously made not in contemplation of this lawsuit. It is like any other lawyer's diary, as Mr. Dwight explained, made largely as a basis for asking compensation at some future time.

Mr. Dwight has been very forthright. It seems to me, since he has now described what occurred and everything that occurred that bears on this issue, that 633
Mr. Thiess is now unduly pressing Mr. Dwight, as he is, to impugn in some wise these entries, which I don't think is justified. I think he is now going a little afield.

Mr. Thiess: All I am trying to ascertain is the complete conversation at this particular meeting when these gentlemen met, and you have an entry here, and I feel that whatever was discussed at that meeting is pertinent.

Mr. Harris: I don't think anything relating to other litigation in which your clients might have an

634 *Richard E. Dwight—For Amici Curiae—Direct.*

interest is the subject of proper inquiry here, only so far as that conversation or conference related to the Kaufman employment and compensation. T... has certainly been most fully described, Your Honor.

The Master: I think that is correct as Mr. Harris has put it. I feel that you could inquire about any conversation that related to Mr. Kaufman in any way, and anything else that bears indirectly on that one subject; but your inquiry generally about the general policy that was adopted in other cases I don't think is material.

635 Mr. Thiess: My question, if Your Honor please, is not directed to policy. My question was merely what other cases they decided to press at that time.

The Master: Well, I think that is a question of policy. I think I will sustain the objection to that.

By Mr. Thiess:

Q. At this meeting you were advised by Judge Haight, as I understand it, that Mr. Kaufman did little, if anything, in this litigation; is that correct? A. That is right.

Q. This Root litigation, and in this conversation that you had at this meeting what reasons, if any, were advanced why 636 Morgan S. Kaufman should be paid $25,000, if you remember? A. He had been given a general retainer by Mr. Belknap covering a period of three and a half years.

Q. But there were not any specific arrangements as to what the retainer was to be? A. I don't know of any.

Q. And there was no—— A. Mr. Belknap retained him and advised us of that.

Q. Mr. Belknap didn't advise you? A. No, I never heard of Mr. Kaufman's name until this time.

Q. And there were none of the details respecting Mr. Belknap's retainer of Mr. Kaufman here before you at the time? A. No.

Q. Was there anything said by any of the parties present respecting any of the amounts that Mr. Kaufman should have received for the services rendered? A. As I told you, yes; $10,000 a year, and Mr. Halle told us he said he would be willing to recommend $25,000, which would be about $7,000 a year, to cover his general retainer for the period he had been so retained, and upon interrogation Judge Haight said he did want to use him in the Crew Levick cases—not necessarily the Crew Levick, these Pennsylvania cases——

Q. Were there any other cases in Pennsylvania?

Mr. Harris: Let him finish, please. 638

The Witness: There were other cases contemplated, yes. There was Empire, Skelly, and Crew Levick to be brought which had not been brought. I don't know whether the Empire was already brought or not at that time. As I told you, I didn't have anything to do with patent litigation, so I had not charged my memory with that.

By Mr. Thiess:

Q. My question was directed primarily to the $25,000 that were paid for past services. A. That is right.

Q. Was there anything said as to why he should be paid 639 the amount of $25,000 for past services when he hadn't rendered any services? A. Not a word. He was under general retainer, as we were told, and in my part of the world you get paid for that.

Q. As I understand it, Mr. Dwight, the only knowledge that you had respecting the fact that Mr. Kaufman was retained was the statement of Mr. Halle and Judge Haight that they had been told by Mr. Belknap that he had been retained; is that correct? A. Yes, general retainer.

Q. Were you consulted at all with respect to any moneys paid to Mr. Kaufman in the Crew Levick litigation? A. I

told you at that meeting we discussed $10,000 retainer in the Crew Levick when that Crew Levick case was brought.

Q. The records here establish that Mr. Kaufman was paid $25,000 in the year 1936. Were you consulted at all about that payment?

Mr. Harris: Just a minute, Mr. Thiess. I don't think that is quite fair without telling Mr. Dwight what the records show.

Mr. Thiess: The records show that he was paid $10,000 in March, $5,000 in July, and $10,000 in
641 December of 1936.

Mr. Harris: That is not all the records show. The records also show that the payment of $10,000 in March was a retainer for the year 1936.

Mr. Thiess: Right.

Mr. Harris: The payment of a retainer in December of 1936 of $10,000 was a retainer for the year 1937.

Mr. Thiess: Yes.

Mr. Harris: And the $5,000 paid in the middle of the year, as I recall it, the voucher says pending litigation, isn't that right?

Mr. Thiess: I think that is correct.

642

By Mr. Thiess:

Q. Were you consulted? A. I was not consulted, I have no recollection of being consulted about anything except this one time when we were up having a general discussion, and Mr. Kaufman's fee was brought up, and Judge Haight's, and perhaps some others, I am not sure.

Mr. Thiess: The reason I did not go into detail was that my question was merely whether he was consulted.

643

Mr. Barris: All right.

The Witness: It wasn't customary to consult anybody about payments ordinarily. This payment to Kaufman was unusual in that it was for past services by way of retainer instead of by way of actual work; that is, he may have done some work, but obviously the payment would not have been justified by the work he did. I assume that is the reason why Mr. Halle asked Mr. Whitney and myself for our opinion on the subject, representing, as we did, all the voting control of the company of which he was president.

644

By Mr. Thiess:

Q. Did you at any time ever discuss the retainer of Morgan S. Kaufman with any other counsel of Universal Oil Products Company, or any of the officials? A. To the best of my recollection, the only time I ever discussed this was at this meeting of which I have this minute.

By Mr. Harris:

Q. September 12? A. September 12, 1935. There are two or three other Universal meetings, but they have nothing to do with this subject, Mr. Kaufman, or anything else.

645

By Mr. Thiess:

Q. Have nothing to do with the payments? A. No, nothing to do.

Cross Examination by Mr. Harris:

Q. Mr. Dwight, directing your attention to September 12, 1935, or thereabouts, will you tell me based on your experience as a practicing lawyer for more than 35 years whether $7,000 retainer for general retention of the services of a metropolitan lawyer was excessive even if that lawyer

646 *Richard E. Dwight—For Amici Curiae—Redirect*

were not called upon to perform any service? A. Well, I wouldn't think so where he was preempted in as large a field as petroleum.

Redirect Examination by Mr. Thiess:

Q. Would you also make that statement if you knew that the man who received that retainer had no knowledge whatever of the patent law, and no knowledge whatsoever of the particular refining art to which the litigation was directed, and had no special qualifications for that particular
647 type of litigation? A. All I know is that Mr. Belknap picked him out, and I would take Mr. Belknap's judgment before I would my own.

Q. Well, based on my assumption would you say that sort of a retainer is legitimate?

Mr. Harris: I think that is pretty hypothetical. I object to it.

Mr. Thiess: Your question was hypothetical.

Mr. Harris: I said if a man were not called upon to render any service.

The Master: You did open the question as to whether that was a proper retainer.

648

By Mr. Thiess:

Q. Can't you answer that question? A. I couldn't answer the question, I would have to have more facts than that in order to base it on. He might be like Senator Reed who didn't have any knowledge of the art, any knowledge of patents, any knowledge whatsoever of the industry——

By Mr. Harris:

Q. Or the case he was in? A. And not even know anything about the case he was in, and yet we paid him a tre

mendous fee because he could get up on his legs and make a speech when we called upon him to do it.

By Mr. Thiess:

Q. Did you know anything about this Universal vs. Standard litigation? A. I know nothing from first-hand knowledge, if that is what you mean.

Q. Do you know what Senator Reed contributed to that litigation? A. I don't know personally.

Q. This last answer is all hearsay? A. Just the same as your question is all hearsay.

650

Q. Oh, no, my question is not hearsay. It was based upon a supposition, that is all.

Mr. Harris: Your Honor, I would like to state at this time, that I don't think it is a proper issue in this case—the remarks that Mr. Thiess has addressed to various witnesses with respect to whether or not Mr. Kaufman was a patent lawyer. Now, these large patent litigations, as Your Honor knows and as Mr. Thiess knows as well as anyone else, involve not only the services of technical patent lawyers like Mr. Hall and Mr. Thomas, but also of experienced general trial and courtroom lawyers.

651

Now, Judge Haight was not primarily a patent lawyer, he was primarily a fine court and appellant lawyer.

Judge Denison was not primarily a patent lawyer, and Judge Hughes, when he was my partner and argued so many patent cases, was not a patent lawyer, but he frequently did it, and I don't think the fact that a man is not a patent lawyer disqualifies him from acting as trial counsel in a patent case.

Mr. Thiess: In view of the statement that you have made of record, I would like to ask you, also, to make of record the general counsel who were employed by

652 *Colloquy*

Universal and were on retainer for Universal at the time that Morgan S. Kaufman was retained or employed.

Mr. Harris: I don't understand the question.

Mr. Thiess: I would like to have made of record the general lawyers in the employ of Universal at the time that Morgan S. Kaufman was retained.

Mr. Harris: We would be very glad to give that. I can mention two very excellent instances, Mr. William D. Whitney, who must be known to you, and Mr.

653 Reichmann.

The Witness: I suppose Mr. Reichmann was also a general lawyer. When we commenced the Globe suit we commenced his service because he was living in Chicago. I don't recall any particular service Mr. Reichmann rendered Universal except in that instance.

Mr. Thiess: Before 1931 he was very active.

The Witness: I can't answer the question. I never heard of Universal Oil until November, 1930.

Mr. Thiess: I can say he was also active in the Universal litigation before November, 1931, and I also want to make of record in answer to your statement,

654 that Judge Denison was a man skilled in the patent law.

Mr. Harris: I did not mean to say he may not be skilled in the patent law very——

Mr. Thiess: But he was not a general lawyer in the respect he didn't know anything about patent law at the time we retained him. Judge Denison had had a lot of patent experience. He had patent experience before he went on the bench, and Judge Denison as a lawyer and as a Judge of the Court of Appeals passed on numerous patent litigations, and in my estimation, was the premier Judge in patent law on the bench at the time that he resigned.

Mr. Harris: I think you, Mr. Thiess, missed my point, which was I did not mean that Judge Denison, Judge Haight and others couldn't look up some patent cases and argue an appeal in a patent case, but they were not primarily the technicians such as Mr. Hall and Mr. Thomas were, but they were primarily lawyers, don't you know, rather than patent technicians.

LEE J. GARY, having been duly sworn, was examined and testified as follows: 656

Direct Examination by Mr. Thiess:

Q. Mr. Gary, you are a practicing patent attorney located in Chicago, Illinois, are you not? A. A practicing lawyer, yes, sir, specializing in the patent law.

Q. And you knew Mr. Frank L. Belknap, did you not? A. Knew him and revered him.

Q. And you were associated with Mr. Frank L. Belknap in the practice of the patent law, were you not, for a long time? A. Associated with Mr. Belknap since March, 1915, with the exception of two years during the last war when I was in the service.

Q. Do you know or do you remember that Mr. Belknap 657 died on May 10, 1933? A. Indeed, I do.

Q. And did you succeed to Mr. Belknap's legal practice upon his death? A. I did. It was willed to me in his will.

Q. And you assisted Mr. Belknap during his lifetime, did you not, in the work which Mr. Belknap did for the Universal Oil Products Company? A. Yes, sir.

Q. Did you retain possession of all the records in Mr. Belknap's office subsequent to his death pertaining to the work which Mr. Belknap did for the Universal Oil Products Company? A. I did.

658 *Lee J. Gary—For Amici Curiae—Direct*

Q. Have you made a search for the memoranda, reports, et cetera, referred to under Item 1A and B, pages 117 to 118 of the record? A. I don't know what pages 117 to 118 of the record are.

(Papers were shown to the witness.)

The Witness: The answer is yes.

By Mr. Thiess:

Q. Did you find any of those records? A. I didn't find
659 any with the exception of the time sheets that were kept by Mr. Belknap, the usual diaries kept by a lawyer.

Q. Have you got those? A. I have those.

Q. May we see them, please?

Mr. Harris: No, just a moment. I understand none of them have any reference to the matter under inquiry, or mentioned in the suggestion.

Mr. Thiess: We are interested in knowing about Mr. Belknap's itinerary during this period of, say, from early in 1932 through 1933, and so forth.

Mr. Harris: I think Mr. Gary has taken that off and will be glad to give it.

660 The Witness: I will be glad to give you that verbally from the record. These are our original records.

By Mr. Thiess:

Q. Before you put that on the record, did you find any entry in Mr. Belknap's diary respecting Mr. Morgan Kaufman's retainer? A. No, sir. The name of Mr. Kaufman isn't mentioned in any of Mr. Belknap's time sheets.

Q. Will you, if you will, put those items on the record? We would like to have them. A. Mr. Belknap returned from California either May 1st or 2nd, 1932. He had spent the

preceding five months in California trying to recover from a heart attack which he suffered in November, 1931.

He left Chicago on the 4th of May for Washington. He was in Washington from May 5 to May 10th.

Between May 11 and May 24th, he was in New York and Washington. On May 20th and 21st, and also on May 23rd, he was in Washington.

On May 25 and 26 he was in New York.

From May 27th to May 31st he was en route to and in Binghamton, New York, visiting his wife's relatives.

On June 1st he was in Detroit, Michigan, visiting his mother. 662

On June 2nd he was in Chicago.

From either June 3rd or 4th until June 28th he was in Atlantic City and New York City.

He was in Chicago on June 29th and 30th, and also on July 1st.

There are no entries between July 1st and July 6th. From July 6th to July 8th, he was in New York, on which date he sailed for Europe.

He returned from Europe on September 30th. From September 30th to October 8th he was in New York and Washington.

Between October 12 and October 14 he was in Chicago. 663

Between October 15 and October 19th he was in New York.

Between October 21st and October 26th, he was in New York and Washington. He was in Wilmington, Delaware, on October 25, for a conference with Judge Morris re the possibility of getting additional time because of Judge Haight's illness.

From October 28th to October 31st, he was in Amsterdam, New York, visiting his wife's relatives.

On November 2 he was in Chicago, and left that day for New York.

664 *Lee J. Gary—For Amici Curiae—Direct*

He was in New York on November 3rd and 4th, and between November 4th and November 26th, he was ill in New York, and on November 26, 1932, he suffered a cerebral hemorrhage from which he did not recover. He was in New York from the time he suffered that stroke until he died on May 10, 1933.

Q. Thank you. Have you ever met Morgan S. Kaufman? A. No, sir.

Q. Did you ever discuss Morgan S. Kaufman with Mr. Belknap? A. No, sir. There was no reason for him to discuss Morgan Kaufman with me because I had little or
665 nothing to do with the litigation. I never met Judge Morris until he walked in this room today. I never met Mr. Berl until he walked in this room today, although they both represented Universal for a good many years.

Q. Then as I understand it, Mr. Gary, you knew nothing about Mr. Kaufman being retained? A. Absolutely nothing.

Q. Did you know that Judge Morris had been retained? A. I knew that he had been retained, but just when I found it out I don't know. Mr. Belknap did not consult with me about retaining Judge Morris, and did not inform me about it. I learned about it I assume the way I learned about a great many things that go on, somebody tells me about it.
666 Maybe Mr. Belknap did. Mr. Belknap spent a great deal of time away from Chicago, and I more or less managed his office in Chicago.

Q. In the litigation, for instance in the Root litigation weren't you kept advised to a certain extent as to what was going on from the standpoint of representing Universal in Chicago and contacting our firm in Chicago? A. Just in a very general sort of a way. I wasn't counsel of record in the case.

Q. No, I knew that. A. I did not attend the trial, I did not attend the conference at Atlantic City. I kept myself generally informed, yes, because I was constantly in touch

with all of the lawyers and all of the technical men that were associated with Universal.

Q. My question was merely leading to this, that as far as the counsel that were active in the Root litigation is concerned, you knew of all of these counsel except Mr. Kaufman, is that correct? A. I wouldn't say that, no. I didn't know whether Judge Morris was or was not, I didn't know who was active in the Root litigation.

Q. You knew that all of these counsel had been retained? A. No, sir.

Q. You knew that Judge Morris had been retained by 668
Universal, didn't you? A. Yes, but in what case I didn't know. I don't know that I knew Judge Morris had been retained at the time of the Root trial. I have said that before. I have since found out Judge Morris was retained. When I found out I have no recollection today whether it was prior to the Root trial or after the Root trial, I don't know, and there would be no reason for me to find out. I had no responsibility for the litigation at all.

Q. But you did hear about Judge Morris' participation in the Root case before it got to the appeal, did you not? A. I really couldn't answer whether I did or did not.

Q. You knew Judge Haight was retained? A. Oh, yes.

Q. And Mr. Hall? A. Yes. Well, now, when you talk 669
about being retained, Universal all these years has had a large number of lawyers working in various capacities, and I knew that Hall had been employed by Universal Oil Products Company since 1913 in various capacities. I didn't know until he testified this morning that he was on an annual retainer, or a guaranteed basis, since some time in 1924 or 1925.

Q. That isn't exactly what I had in mind, Mr. Gary. You knew that Mr. Hall and Mr. Thomas would be active in any patent litigation? A. I assumed so, yes.

Q. In which Universal was involved? A. I assumed so.

Q. You also knew, did you not, that Judge Haight and Judge Morris were active in that litigation at that time? A. No, I wouldn't say that as far as Judge Haight and Judge Morris were concerned.

Mr. Harris: Pardon me, Mr. Thiess, you are speaking of 1932, are you?

Mr. Thiess: As of 1932 and up to, say, 1936 or 1937.

Mr. Harris: I would like you to specify in your
671 questions, or the witness to specify in his answers what period he has in mind.

The Witness: I have been testifying on the assumption Mr. Thiess was referring to 1932.

By Mr. Thiess:

Q. I thought I had placed this by stating at the time of the argument on appeal. A. I don't know when the argument on appeal took place, and that is the first time you mentioned it.

Q. That is January of 1935. A. What is your question?

Q. Whether you knew at that time that Judge Morris and Judge Haight, Mr. Hall and Mr. Thomas, and Mr. Whitney
672 and these other lawyers were active and employed by the Universal Oil Products Company. A. I can answer the question definitely with respect to Mr. Hall and Mr. Thomas. I have no recollection with reference to Judge Haight or Judge Morris. I do have a recollection of Mr. Whitney actively participating in the preparation of the brief on appeal. It was hearsay, I didn't see him work on it, and he did not discuss it with me.

Q. Subsequent to Mr. Belknap's death didn't you take a more active part in the litigation in which Universal Products was involved than you did prior to his death? A. No, I wouldn't say so, Mr. Thiess. If you are referring to the

part I played in exchanging professional courtesies with your office and with counsel representing opponents in litigation involving Universal, I have always done that more or less because of the fact that Mr. Belknap was away so much of the time and would communicate—would either use my own judgment about agreeing to an extension or postponement, or communicate with counsel who were charged with the responsibility of the case, depending entirely on where the case was filed. I think you know that.

Q. That is right, but who would be the counsel that you would communicate with? A. I would communicate with Mr. Belknap, communicate with Judge——

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Q. I mean after Mr. Belknap's death. A. After Mr. Belknap's death I would communicate with Judge Haight, and Mr. Hall. As I have told you often when you and your associate, Mr. Newman have telephoned me with reference to securing extensions, or things of that character, I would inform you that I would have to communicate with Judge Haight or Mr. Hall.

Q. Did you ever communicate with Judge Morris with respect to any of this litigation? A. I don't believe so. I wouldn't say that I did not.

Q. Now, in view of the fact that you have told me that you had never met Mr. Kaufman, I take it that your never sent Mr. Kaufman any records in any cases, and particularly not in the Root case; is that correct? A. That is correct. I never had anything to do with Mr. Kaufman directly or indirectly.

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Mr. Thiess: That is all.

Cross-Examination by Mr. Harris:

Q. You never had anything to do with any of the litigation, did you? A. No.

Q. Any of the patent litigation? A. No.

Q. Other than as you have described extending professional courtesies? A. That is right, sir.

676 *Lee J. Gary—For Amici Curiae—Redirect*

Redirect Examination by Mr. Thiess:

Q. Your activity with respect to Universal Oil Products Company was primarily what, Mr. Gary? A. I now have charge of the preparation and the filing of their applications for patent, the responsibility together with the men in the office of Charles Thomas for the prosecution of those applications, and for the conduct of interferences, the issuing of patents, reissuing of patents, consultations with company officials and executives regarding licenses, rendering infringement opinions, validity opinions on patents, and things of
677 that general character. My name is of record in some of the suits which have been filed merely for convenience more than anything else.

Q. Just one more question. Did you at any time attend conferences with respect to any patent litigation with Universal at which the other attorneys were present? A. Frequently.

Q. Did you attend any conferences with reference to the Root litigation?

Mr. Harris: As of what period were these last two questions?

Mr. Thiess: As of the period at the time the Root litigation started until the end.

678 The Witness: To date, yes.

Mr. Harris: Those last two questions relate from 1932 to date.

The Witness: Will you read the question?

(The question was repeated by the reporter as follows:)

"Did you attend any conferences with reference to the Root litigation?"

A. I can't single out the Root litigation specifically. I believe it was brought up and discussed at some of the conferences that I have attended on litigation.

By Mr. Thiess:

Q. Have you any recollection as to where those conferences were that you attended, Chicago, New York, Washington or where? A. They were in Washington, they were in New York, they were in Chicago.

Q. Do you remember who was present at those conferences? A. Well, at the conference in New York Judge Haight would be present, Mr. Hall, Mr. Thomas, sometimes Mr. Dwight, sometimes Mr. Whitney, Mr. Halle, Mr. Behrens.

Q. Do you remember any conference of that character at which Judge Morris was present? A. As I told you, I never met Judge Morris until he walked in here today. 680

Mr. Thiess: That is all.

Recross Examination by Mr. Harris:

Q. Mr. Gary, when you say that you attended conferences on the Root litigation or may have—— A. I may have.

Q. Do any of those conferences have anything to do with the prosecution of the case or the defending of the appeal? A. It may have had, Mr. Harris, but I had no responsibility for that.

Q. Did you sit in any part of the preparation of that case for trial? A. No, sir. 681

Q. Did you have anything to do with the preparation of the briefs on appeal? A. No, sir.

Q. What you really did was to largely discuss the effect of it with respect to other litigation, didn't you? A. Exactly.

Q. You discussed your duties in response to a question by Mr. Thiess, and I suppose you had in mind your duties and services performed for Universal over the period from 1932 to date? A. That is correct.

Q. But in 1932 and 1933, or particularly 1932, what were your duties? A. In 1932 my duties were to take care of Mr.

682 *Lee J. Gary—For Amici Curiae—Redirect*

Belknap's practice in Chicago in so far as I was able to do it.

Q. You were not a partner of his, were you, at the time? A. No, sir.

Q. And you were just one of the bright young men in his office at that time, is that right? A. An employee.

Q. And you occupied the position of an employee? A. That is correct.

Q. And when he passed away he was good enough to leave in his will his practice to you? A. That is right.

683 Q. But prior to that time you were not an important man in the office at all? A. That is correct.

Q. And you were just a young man doing such chores as he told you to do? A. That is correct, entirely under his supervision.

Redirect Examination by Mr. Thiess:

Q. Mr. Gary, during that period that you were just interrogated about prior to Mr. Belknap's death, who else was in the office besides yourself and Mr. Belknap? A. Well, now, what period is that?

Q. 1932. A. In 1932?

Q. Yes. A. I believe Mr. Desmond was associated with
684 us at that time, and as far as I know, that is all.

Q. And Mr. Belknap was absent from the office quite a bit, and you attended to whatever came up in the office, did you not? A. Under his supervision.

Q. Now, did you get a copy of the opinion which was rendered in the Root case in the District Court and in the Court of Appeals shortly after those opinions were handed down by the Court? A. I must have, Mr. Thiess, but I have no recollection today of just when I received copies of them. I did see the opinions. Now, whether I saw them in typewritten form before they were reported in the Reporters, I can't answer.

Q. You don't remember that? A. I feel sure that I did see typewritten copies of the opinions because, naturally, representing Universal and doing so much work for them, and being vitally interested in what success they had, I would try to see some copies of the opinions as soon as I could.

Q. And they would send you copies? A. That is right.

By the Master:

Q. Mr. Gary, you have before you Mr. Belknap's diaries, I believe? A. Yes, Mr. Master.

Q. Does it show interviews at different dates with various counsel for Universal? A. It does. 686

Mr. Harris: We will be very happy for the Master to brouse through it.

The Master: I just wanted to ask that question.

Mr. Harris: I think the Master should.

Mr. Thiess: I wonder if I may see it, too.

Mr. Harris: If the Master thinks there are any material entries, we would be very happy to have you see them, not to brouse through them generally.

The Master: Well, the only thing I had in my mind was inquiring if the diaries would show an interview with other counsel in view of the fact they did not show anything in regard to an interview with Mr. Kaufman. 687

Mr. Harris: Can you answer that, Mr. Gary?

The Witness: Will you read the question to me?

(The statement by the Master was repeated by the reporter as follows:)

"Well, the only thing I had in my mind was inquiring if the diaries would show an interview with other counsel in view of the fact they did not show anything in regard to an interview with Mr. Kaufman."

688 *Colloquy*

Mr. Thiess: I think it might be well to put into the record what other counsel had been interviewed, in view of the fact that I am not permitted to see these entries in the diary.

Mr. Harris: In so far as related to the Root case.

The Master: If you want to let me have them, I will do that.

In response to the request of counsel the diary shows under dates of May 5, 6, 7, 8, 9 and 10, 1932, interviews with Hall, Thomas, Burns, Gary, Alex-
689 ander, Lewis and witnesses relative to proofs in the Root case, several long-distance telephonic interviews with Judge Haight; also time spent in the matter of various interference matters with Thomas and Burns; and under date of May 7th, 8th and 9th, it says time spent with Gary and Thomas re Bloehn.

The Witness: That is not a charge against Universal Oil Products Company, Your Honor.

The Master: That is some other case, but, nevertheless, an interview with counsel.

Mr. Harris: It is not for the Universal.

The Master: I understand that. Under date of May 22nd to May 26th there is quite a long entry
690 relating to conferences with Messrs. Hall, Thomas and Burns, and work with Messrs. Lewis, Hall, Thomas and Burns; conference with Judge Haight, conference with Mr. Halle, later conferences with Messrs. Hall, Haight, Thomas, Halle, Behrens and Seguy, largely re Winkler-Koch suits; also attended meetings of representatives of various companies interested in Universal.

The same item says conference with Messrs. Halle and Behrens May 25 and 26.

Under date of May 23rd, 1932 long-distance call to Dearborn at New York, and conferences re witnesses in Root case with Hall, Thomas and Seguy.

Entry of June 29th and 30th, and July 1st, refers to conferences with Messrs. Halle, Pyzel and Behrens, time spent studying report furnished by Messrs. Seguy and Thomas on the Root case, conferences preparatory to trial; conferences at Atlantic City with Messrs. Thomas, Hall, Seguy and Burrell; later conference with Messrs. Weber, McAdams, Lewis, Seguy, Burrell, Wiles, Thomas and Hall, and conference with Messrs. Halle, Whitney and Judge Haight, Thomas and Hall re same; conference with Messrs. Hall and Seguy just before their leaving for Wilmington, and then under date of June 1st to July 1st, 692
there is a reference to a conference with Judge Haight in the Root case a short time in City with Messrs. Halle and Behrens; conferences with numerous other counsel mentioned whose names I have not hitherto heard, re Uhde. That is another case, I suppose.

Mr. Harris: Yes.

The Master: Under date of July 6,—this is all 1932—conference with Messrs. Halle and Behrens re Uhde and other matters.

Then there are several references to conferences abroad which perhaps are not material, and then under date of September 30th to October 8th, conference 693
with Mr. Halle and Mr. Behrens, also various conferences with Mr. Gary, conference with Judge Haight in New York, conference in Washington with Messrs. Hall, Thomas, Seguy, Behrens, Francis Thomas re Winkler-Koch suit, matters, pending interferences, oppositions, Uhde matter pending applications.

There is entered under date of October 15 to 19 conference with Mr. Halle, Mr. Behrens, Mr. Borden, re Doherty matters; Messrs. Whitney, Dwight and Behrens; telephonic conferences with Mr. Hall of Washington; under date of October 21 to 26, inclu-

sive, conference with Judge Morris re possibility of getting additional time because of Judge Haight's illness; conference with Messrs. Hall and Thomas, also Judge Morris; under date of October 24th, conference with Holmes Hall trying to settle his claim re Kansas City suit.

Chicago, November 1st, 1932, conference with Messrs Egloff, Seguy and Gary re Wulff re California patent situation, with attorneys Corbin and Mr. Kingsland and Mr. Seguy.

695 Under date of November 2, conference with Dr. Egloff and others.

Mr. Harris: Dr. Egloff was an inventor, not a lawyer.

The Master: Yes; and the last entry conference at New York office with Messrs. Halle, Behrens, and later conference with Messrs. Dwight, Whitney, Van Eck, Airey, Halle, Behrens and others. That is dated November 3rd and 4th.

That is the last entry in his diary, no entries with regard to Mr. Kaufman.

By Mr. Thiess:

696 Q. Is that a complete diary, Mr. Gary, for the period 1932 to Mr. Belknap's death? A. So far as I know, it is, Mr. Thiess. I don't know of any other diary that was kept.

Mr. Thiess: All right, that is all.

EUGENE ENNALLS BERL, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thiess:

Q. Mr. Berl, you are a practicing lawyer located in Wilmington, Delaware, are you not? A. Yes.

Q. And you do not specialize in patent law? A. No.

Q. Were you employed as local counsel by the plaintiff in the case of Universal Oil Company vs. Root Refining Company? A. Yes.

Q. Can you tell me when and by whom you were retained? A. By whom I was retained, probably not; I think probably by Mr. Hall, but I am not sure. From my firm's books I find a retainer fee on April 2, 1931. That is when it was received.

Q. What date is that? A. April 2, 1931. I take it it is 1931.

Q. And that is a retainer fee for it, did you say? A. It is marked a fee, I suppose it is a retainer fee, yes.

Q. Does it give the amount of the retainer fee? A. Yes, 698
$250.

Q. Is that the retainer fee you got in that litigation? A. I think so. I may say that probably that has very little relation to the time when I entered an appearance. You probably have the record about that. I probably filed the bill in the case. I might have sent out a bill at approximately that time, or it might have been a substantially later time.

Q. Have you made a search for the records referred to under 1A, pages 118-9 of the record? You know what they are? A. Well, I think that is the communication that I got from Mr. O'Mara.

699

Q. That is right. A. Yes.

Q. Did you find any papers relating to that? A. Very little. The only papers that I find are with reference to a bill which was rendered and paid in 1939.

Q. And what is the entry with respect to the bill and the amount? A. I find that Ward & Gray sent a bill to Universal Oil Products Company covering a variety of things, one item being Universal Oil Products Company, professional services. It is entitled against Skelly Oil Company accounting, and the remainder referring to different proceedings in the Root case, with a kind of a general item

700 *Eugene Ennalls Berl—For Amici Curiae—Direct*

at the end, other general services in connection with patent litigation. That was rendered on March 7, 1939.

Q. And what was the amount of that? A. The amount of that was $1,000 for services and $26.30 for disbursements, and on March 10th I received a letter from the Universal Oil Products Company from Mr. Leonard asking me if I would allocate the Skelly accounting part of the bill, which I did in the sum of $250, and apparently a couple of days later we received a check.

Q. And that is the amount of your charges as local counsel in the Root litigation? A. That is what I have been
701 able to find.

Q. Let me ask you, Mr. Neuman just called my attention to the fact that he thinks the record may not be clear. There were two bills rendered, one originally for $250, is that right? A. There must have been because our records show the payment on April 2 of $250.

Q. And the other amount allocated to the Root case was what? A. That would have been $750, unless there were some trifling other things that came in under that general heading, I doubt if there were.

Q. As I understand it you were not local counsel in the Empire case? A. That's right.

702 Q. Did you ever know Mr. Morgan S. Kaufman? A. No, I never knew him.

Mr. Thiess: That is all.

The Witness: In view of the fact that this question has arisen while I have been listening here, I am able to gauge pretty accurately for you the date of Judge Woolley's illness, if that is still of interest.

Mr. Thiess: I think that it would be very helpful.

The Witness: And I do it in this way: reported at 83 Federal 2nd 271 is a decision by the Circuit Court of Appeals for this circuit in the case of Franco-Wyoming Oil Co. vs. Ehrlick, which was a case that

Mr. Logan and I on opposing sides had over a number of years. That decision was rendered on March 10, 1936, according to the report, and the Court was Woolley, Davis and Thompson. The opinion was written by Judge Davis.

By the Master:

Q. What year was that? A. That was March 10, 1936. Now, I recall that between the time of the argument of the case—and Mr. Logan and I have agreed that it was but a few months before the decision was rendered—that Judge Woolley sat in the case. He was active at that time, and 704
as a matter of fact, in view of the fact that it involved to an extent a point of common law pleading in which he was an author and an authority we had expected that Judge Woolley would write the opinion in the case. He showed a great deal of interest in the point. So that it was between March 10, 1936, and the date of that argument, which was a few months prior to that time, maybe as much as six months; Judge Woolley was active upon the bench.

The Master: I suggest that you consult the Clerk, because my recollection is that he was, except for very rare appearances, inactive much longer than that. I might be wrong, but that is my recollection. 705

The Witness: My recollection, sir, is Judge Woolley was active until the time when he became inactive, until the time of his sickness which occurred between this argument and the date of the rendering of the opinion.

Mr. Harris: Can we adjourn?

The Master: Yes, Mr. Harris suggests we adjourn now. That will be all right. Shall we make it 10:00 o'clock tomorrow morning?

Mr. Thiess: That is satisfactory to me.

706 *Eugene Ennalls Berl—For Amici Curiae—Direct*

By Mr. Thiess:

Q. Isn't it a fact that you attended part of the trial of the Root case? Weren't you there? A. I think I probably did, as I usually do in cases of that sort, turned up and had counsel for the plaintiff admitted pro hac vice, but disappeared as conveniently afterwards as my withdrawing wouldn't attract attention.

Q. And as local counsel you were consulted and you filed the papers that were sent to you from other counsel? A. I don't think I was consulted to any extent about the
707 filing of the bill. Later in the litigation when this hole that you tried to get them into, as Mr. Dwight testified, came before the Court, I think that I probably did take a little part in that in the consultations and made some suggestions as to the brief, and I think I sat through at least one of those conferences.

Q. And your office filed all the papers, did it not, after the bill and complaint had been filed? They were sent to you for filing? A. I think that I must have signed them all, but after the beginning of the Root case, as you have heard, Judge Morris who had then retired from the bench became active in the case, and I was never active in it, and it may be that some of the papers were filed with his signa-
708 ture and not with mine, although I doubt it.

I wonder if I may add a word to my testimony? I never was under any kind of a retainer from Universal Oil Company although I represented them in different things over a good many years, and whenever I thought I had done a little, sent them a bill. That is the only way in which I happened to be paid.

(Adjourned to Wednesday, May 13, 1942, at 10:00 o'clock A. M.)

Transcript of Hearing, May 13, 1942 709

Meeting held before Thomas Raeburn White, Esq., Master, 1930 Land Title Building, Philadelphia, Pa., on Wednesday, May 13, 1942, at 10:00 o'clock A. M.

Present:

THOMAS RAEBURN WHITE, Esq., Master.

J. BERNHARD THIESS, Esq.,
(77 West Washington Street,
Chicago, Ill.).

SIDNEY NEUMAN, Esq.,
(77 West Washington Street, 710
Chicago, Ill.).

ROBERT W. POORE, Esq.,
(77 West Washington Street,
amici curiae).

EDWARD J. O'MARA, Esq.,
(15 Exchange Place,
Jersey City, New Jersey),

RALPH S. HARRIS, Esq.,
(100 Broadway, New York City),
and
JOHN R. MCCULLOUGH, Esq.,
(100 Broadway, New York City), 711
Representing the Universal Oil Products Company.

Mr. Thiess: I would like also to call to Your Honor's attention the fact that there is a letter missing in this file, and I would like to call upon Mr. O'Mara to produce the letter of Judge Woolley to Judge Haight dated September 25, 1934, and referred to in Judge Haight's letter of September 28, 1934.

Mr. Harris: Is that the only one?

Mr. Thiess: That is the only one that is missing.

Mr. O'Mara: This file isn't from my office, you understand.

Mr. Thiess: The letter was apparently written by Judge Haight, if you will read the first paragraph, and I presume you would have a copy of it in your office.

Mr. O'Mara: I will make a search for it of course.

Mr. Thiess: Might I also ask you, Mr. O'Mara, to produce any correspondence in your firm's file referring to Morgan Kaufman by name or otherwise and specifically any letters transmitting to Kaufman any papers concerning the Root case.

Mr. O'Mara: Yes.

Mr. Harris: We will talk about that. That certainly is not within the suggestions previously submitted to His Honor by you. You did not ask for anything from Judge Haight's files.

Mr. Thiess: I didn't know, but at the present time in view of the development here I think we should get any correspondence from Judge Haight's files.

Mr. Harris: What occasions that request?

Mr. Thiess: The testimony that has been adduced to date which put us in a position that we would like to know whether there is any correspondence in Judge Haight's files referring to Mr. Kaufman.

The Master: I would suggest in that connection, as I recall it, Judge Haight said that Mr. Kaufman had done nothing, and that he had sent nothing to him in the statement which is in this list here, in this record. Am I wrong about that?

Mr. Harris: I don't recall, but that may well be right.

The Master: Perhaps we need not go into it now.

Mr. Neuman: The point is that Judge Haight being dead we did not prepare a subpoena for him at the time.

The Master: If there is any correspondence with Mr. Kaufman I should think we ought to have it. I don't know whether there is or not. I just have a recollection that Judge Haight indicated to me there was none, but I may be wrong.

Mr. Harris: Senator O'Mara will be very glad to look it up for the next hearing.

Mr. O'Mara: Certainly.

Mr. Harris: Your Honor, I have asked Mr. Gary to return and take the stand, with Your Honor's permission. On the way back to New York last night I learned that the diaries which he produced which were 716.
Mr. Belknap's original office diaries were supported by certain letters in certain respects which Mr. Belknap had written to his secretary when he was at Chicago, and it seemed that those letters, by which the secretary made up the diary entries would throw some light on the manner in which the diary was kept, and perhaps will account for the fact that very often a number of days would be included under one entry. I have also decided to let Mr. Thiess look both at the diary and the letters. I had not yesterday looked at it, and I thought there might be some things of a highly confidential nature which applied to other 717
cases. I find none, and in any event, I trust Mr. Thiess's discretion completely. So, if I may, I would like to call Mr. Gary back to the stand for a moment.

The Master: Yes.

J. GARY, recalled.

Examination by Mr. Harris:

Mr. Gary, I show you a letter purporting to be writ-
Mr. Frank L. Belknap to Miss Marie Lagerstadt and
May 10, 1932; another one of May 10, 1932; May 23,

1932; and October 5, 1932; October 19, 1932; October 26, 1932; and a letter purporting to be from Mr. Belknap to Miss Helen Lagerstadt, dated July 8, 1932; and a letter purporting to be from Mr. Belknap to you, dated, I believe, as well as I can decipher the handwriting, August 28th, which I assume is 1932. I ask you if those letters were all signed by Mr. Belknap. A. The long letter of May 10, 1932, was signed by Mr. Belknap.

Q. Just look them all through. Are they all? A. The following letters are also signed by Mr. Belknap: the one of July 8, 1932; the one of October 5, 1932; the one of October
719 19, 1932.

Q. And the others were signed by—— A. Apparently the others were signed by the secretary who wrote the letters, the public stenographer who wrote the letters.

Q. I ask you how about the handwritten letter. A. The handwritten letter was written by Mr. Belknap.

Q. And signed by him? A. And signed by him.

Q. Who was Miss Marie Lagerstadt? A. Miss Marie Lagerstadt was Mr. Belknap's secretary at that time.

Q. And who was Miss Helen Lagerstadt? A. Miss Helen Lagerstadt was Marie Lagerstadt's younger sister who was also an employee of Mr. Belknap in his Chicago office.

720 Q. Did she act as his secretary in the absence of Miss Marie? A. She did.

Q. Do you know what the custom of Mr. Belknap was with respect to the preparation of his professional diaries, particularly when he was out of town? A. When Mr. Belknap was out of town—and he was out of town a great deal—he would frequently address letters such as these letters to his secretary in Chicago, listing his entries for the purpose of having her transcribe them on the entry sheets which I produced yesterday.

Q. Do you find there any letters covering the period June 1st to July 1st, 1932? A. No, I do not.

Q. I notice the diary sheets say F. L. Belknap, New York, Atlantic City, and Chicago, which would indicate that at least during part of that period he was in Chicago. A. That is correct.

Q. Would the order of those cities indicate that he was in Chicago at the end of the period? A. Yes.

Q. And was it his custom sometimes when he came back from trips to himself, dictate to his secretary entries for the diary? A. He frequently did that.

Q. But with respect to letters he sent in, such as those I have produced, what was his custom? Did he dictate them or did the secretary herself prepare the entries from the 722
letters? A. With reference to the letters which I have just identified, his secretary would copy the entries from these original letters to entry sheets which I produced yesterday, and those entry sheets would then become what we would refer to in our office as our original records.

Q. Do you know whether Mr. Belknap was in the habit of examining the diary sheets after they were prepared and prior to sending bills? A. He was not in the habit of examining the entry sheets which you have in your hand after they had been prepared.

Q. So that the information therein contained which was taken from your letters involves either a copying out by his secretary, or her interpretation of his letters? A. That is cor- 723
rect.

Mr. Harris: Your Honor, I call your attention to the entry which Your Honor read yesterday in connection with a list of persons. It covers the period June 1st to July 1st, 1932, and in reading the list of persons with whom Mr. Belknap had conferences in Atlantic City, I understood Your Honor, among others, to read the name of Mr. Berl. I am sure that was intended for Mr. Burrell because the name, Burrell, was not the attorney of record in Delaware who

724 appeared as a witness yesterday, but I understand a scientific expert.

Mr. Thiess: That is correct.

Mr. Harris: May I have it understood that is corrected?

The Master: I hesitated a little over the way to pronounce the name.

Mr. Harris: I should like to mark as Universal's Exhibit 3 the diary sheets produced yesterday by Mr. Gary.

725 (Diary sheets consisting of ten pages, of Mr. Frank L. Belknap were marked Universal Exhibit 3.)

Mr. Harris: I will hand them to Mr. Thiess.

I should like also to have marked for the record the letters which I have this morning produced and enumerated, and ask that they be marked Universal Exhibit 4.

(Letters consisting of twelve pages written by Frank L. Belknap to his Chicago office were marked Universal Exhibit 4.)

726 Mr. Harris: Your Honor, in connection with Universal Exhibit 4, I note that in the letter of Mr. Belknap dated May 23, 1932, which purports to cover diary entries from May 2, to May 26th, or three days after the letter was written, Mr. Belknap states as follows:

"Note: On entries for May 25th and 26th I may want to make some correction for those two days so please take that up with me before you prepare the bill. The charge for time is thirteen days."

That is for the entire period from May 2nd to 26th. It is quite apparent from the preceding paragraph that

Mr. Belknap contemplated at the time he wrote the letter, that he would perform certain services on those dates because the last clause of the preceding paragraph reads:

"* * * also conferences with Messrs. Halle and Behrens (May 25th and 26th)."

Mr. Thiess: Don't they speak for themselves, Your Honor? I don't think they need explanation at the present time.

The Master: Well, it is an argument, it may be helpful. 728

Mr. Harris: I only took that means of calling it to His Honor's attention.

The Master: All right.

The Witness: Mr. Harris, I don't believe I identified that letter of May 23rd. The letter is unsigned, but on the second page of the letter there is a pencil notation in Mr. Belknap's handwriting.

y Mr. Harris:

Q. Were all of the letters comprised in Universal's Exibit 4 received in Mr. Belknap's office, and did you produce iem from your files? A. That's right. 729

Mr. Harris: Your Honor, may I state on the record I did not know of the existence of these letters myself until I learned of them on the train last night in a general conference with Mr. Gary.

The Master: Yes.

y Mr. Harris:

Q. I would suggest at the present time you read this nghand letter into the record. I think it is rather hard to cipher. A. Shall I read the entire letter? It is only the st paragraph that refers to these entries.

Mr. Thiess: I think you could read the entire letter.

Mr. Harris: I think not; you can read the rest of it.

Mr. Thiess: I can't read it very well.

Mr. Harris: The rest doesn't have a thing to do with this case. I don't mind his reading it aloud, but don't put any part in the record that is not relevant.

(Discussion off the record.)

731 *By Mr. Thiess:*

Q. Will you read the first paragraph into the record. A. Letter from Mr. Belknap addressed to me, dated August 28th.

By Mr. Harris:

Q. What year? A. The year is not given in the letter, but I know it was in 1932. It is from Bad Nauheim, Germany.

"Dear Lee:

732 Have quite a lot of correspondence from H. J. on Uhde; also a box full from Uhde. Have done at least seven days' work here (note for entries) including letters to Halle and Scholbien, and cabled to latter."

By Mr. Thiess:

Q. And for clarification on the record, H. J. referred to in that letter is who? A. Mr. H. J. Halle, President of the Universal Oil Products Company.

Mr. Thiess: Did I understand that you offered these letters?

Mr. Harris: I have. I haven't compared them with the diaries, I don't know whether they jibe or not. I can leave that to you, I am sure.

Redirect Examination by Mr. Thiess:

Q. Mr. Gary, does this batch of letters which is Universal Exhibit 4, cover all the correspondence that you have for the period purported to be covered by the diary which refers to entries made in the diary? In other words, are these all the letters that you have from Mr. Belknap for diary entries covering the period in the diary that you have produced as Universal Exhibit 3? A. May I see the diary, when it starts?

(Papers were shown to the witness.)

The Witness: Yes, those are all the letters that 734
we are able to find in an investigation which I conducted, and a portion of which was conducted under my supervision, addressed to anyone in our office in Chicago relating to Mr. Belknap's entries for the period between May 2, 1932, and up to the date of his death, May 10, 1933.

By Mr. Thiess:

Q. Do you know whether Mr. Belknap personally dictated any of these entries in this diary, Universal Exhibit 3? A. May I see the letters?

Mr. Harris: And the diary. 735

(Papers were shown to the witness.)

The Witness: I do not know if of my own personal knowledge, but based upon my years of association with Mr. Belknap, I believe that he personally dictated to his secretary the entry for May 2nd, 3rd and 4th, 1932.

Mr. Harris: That is covered by the letter, you know.

The Witness: I am wrong on that, then—and the entries for June 1st to July 1st, 1932; and the entries for October 12, 13 and 14, 1932; and the entries for November 1, 1932, and for November 2, 1932.

736 *Lee J. Gary—For Amici Curiae—(Recalled)—Redirect*

By Mr. Harris:

Q. How about May 2, 3 and 4? A. I do not believe that he personally dictated the entries for May 2, 3 and 4, 1932, which appear on Universal Exhibit 3.

By Mr. Thiess:

Q. I judge from the answer that you have just given that all entries in that diary not covered by supporting letters, Universal Exhibit 4, were dictated personally by Mr. Belknap, is that correct? A. I believe that is a fair statement.

737

Mr. Harris: May I just interpolate a question at that point?

Mr. Thiess: Go ahead.

By Mr. Harris:

Q. Do you know whether or not Mr. Belknap had ever dictated diary entries other than in person, that is, by telephone, for example? A. Yes. He frequently did that. Mr. Belknap detested detail, and did not, to my knowledge, keep a personal handwritten diary, and would frequently telephone from a point outside of Chicago to discuss several matters, and I have heard him dictate entries to his secre-

738 tary on the long distance telephone.

By Mr. Thiess:

Q. Now, as I understand your testimony, Mr. Gary, bills were rendered from these diary entries Universal Exhibit 3? A. That is correct.

Q. And I also understood you to say that Mr. Belknap never checked the entries in his diary after they were once dictated; is that correct? A. Mr. Belknap did not make it a practice of examining the entries which are reproduced in Universal's Exhibit 3. Does that answer your question?

Q. Well, I thought it was a little broader. I thought you testified that he never re-checked these diary entries after he

had once made them; is that correct? A. Well, I can answer it to this extent, that to my knowledge, I have never seen Mr. Belknap re-check his diary entries of the type which appear on Universal Exhibit 3.

Q. And the bills were made from those diary entries? A. The bills were made from those diary entries, but Mr. Belknap always examined the bills before they went out.

Q. Well, then, in effect, in examining the bills, he was checking his diary entries?

Mr. Harris: That is slightly argumentative, isn't it?

740

The Witness: I can only give you the facts.

By Mr. Thiess:

Q. Was it his practice to always check the bills before they went out?

Mr. Harris: By checking, you mean examining them?

Mr. Thiess: Examining them and seeing that the entries were correct.

The Witness: Mr. Belknap would read all of the bills that were made out in our office against those clients for whom he was rendering legal services, and would approve those bills before they were sent out 741 from our office.

By Mr. Thiess:

Q. And at times when he checked those bills would he make alterations and changes? A. Frequently.

Q. Referring to the entries in the diary May 23 to May 26, 1932, I note the statement:

"See Belknap's Universal statement dated June 6, 1932, for balance of entries for these days."

And in the letter of May 23, 1932, which has been produced, he says:

742 *Lee J. Gary—For Amici Curiae—(Recalled)—Redirect*

"On entries for May 25 and 26 I may want to make some correction for those two days, so please take that up with me before you prepare the bill. The charge for time is thirteen days."

Do you have that with you to show what corrections were made? A. No, I do not.

Q. Do you know what corrections were made? A. No, I do not.

Mr. Harris: We will get that for you if Mr. Gary
743 has it. Apparently the girl writing up the diary just carried over that note that is in his letter.

By the Master:

Q. Mr. Gary, I would like to ask you one question. I notice in this diary that Mr. Belknap speaks of being in Chicago and in New York, apparently, and Washington in late May of 1932. Do you have any record anywhere that he was in Philadelphia at any time in May or June of 1932? A. I believe that one of the letters in Universal Exhibit 4 states that he was in Philadelphia. May I see those letters?

744 (Papers were shown to the witness.)

The Witness: No I am wrong in that. I was confusing that with the entry for October 25 when Mr. Belknap went to Wilmington, Delaware, and had a conference with Judge Morris.

By the Master:

Q. The reason I ask, Mr. Kaufman in the investigation before the Grand Jury in New York headed United States vs. John Doe, which has been examined by counsel, and I assume will be offered later, said that

he had an interview with Mr. Belknap in the spring of 1932 at the Bellevue-Stratford in Philadelphia, at which time he was retained for Universal. Did you ever hear anything about that? A. No, sir, I never did.

Q. And there are no entries that relate to it, of any kind? A. No entries that I know.

Mr. Thiess: I have no more questions.

Mr. Harris: May Mr. Gary be discharged now?

The Master: Yes.

Mr. Harris: Mr. Gary, send us that bill immediately, and I will send a copy to Mr. Thiess. 746

The Witness: Yes.

Mr. Thiess: May we have photostats of the diary entries and letters?

Mr. Harris: I am agreeable to that with the understanding that these are produced to show the method in which the diary was kept, and to show whether or not there were references to the employment of Mr. Kaufman, as I understand, and I hope that counsel will make no use of other material there, or refer to it. That was the only feeling of delicacy I had yesterday in showing you the diary.

Mr. Thiess: As far as this proceeding is concerned, you may rest assured we are not going to broadcast it. 747

Mr. Harris: You won't use it elsewhere?

The Master: That will be understood.

The Witness: I would like to leave the amount of Mr. Belknap's charge off the bill, if there is no objection.

The Master: I don't think that is material.

Mr. Harris: All you need do is send me the original bill, and we will make a copy.

748 *W. Meredith Behrens—For Amici Curiae—Direct*

W. MEREDITH BEHRENS, having been duly sworn, was examined and testified as follows:

Direct Examination:

Mr. Thiess: At this time I would like to offer in evidence as Amici Exhibit 3 the testimony of Mr. Behrens taken before the Grand Jury, which has been produced by the Master.

Mr. Harris: With the understanding previously noted, which I understand holds good all through the
749 hearing without further notation, that while we welcome this informal method of producing proof for the purpose of an investigation of the probity of the Court, we do not recognize it as binding on Universal Oil Products Company in so far as it may affect any rights or property it may have. This is not a proper proceeding for that.

Mr. Thiess: There has been a general exception to this on the record at the present time.

The Master: That is understood.

(The testimony of W. M. Behrens taken before the Grand Jury was marked Amici Exhibit 3.)

750 Mr. Thiess: I would like to offer in evidence as Amici Exhibit 4 the accounting requisition for $25,000 paid to Morgan S. Kaufman dated October 18, 1935, Chicago, Illinois.

(Accounting requisition dated October 18, 1935, for $25,000 to Morgan S. Kaufman was marked Amici Exhibit 4.)

Mr. Thiess: I would like to offer in evidence as Amici Exhibit 5 the check voucher dated 10/18/35, re the payment of the $25,000.

751

(Check voucher dated 10/18/35, covering the payment of $25,000 was marked Amici Exhibit 5.)

Mr. Thiess: I would like to offer as Amici Exhibit 6 the distribution record re the payment of $25,000 to Morgan S. Kaufman. That is the back side of Amici Exhibit 5.

(Distribution record re the payment of $25,000 to Morgan S. Kaufman, being the back side of Amici Exhibit 5, was marked Amici Exhibit 6.)

752

Mr. Thiess: I offer in evidence as Amici Exhibit 7 Universal check in the amount of $25,000 paid to Morgan S. Kaufman dated October 18, 1935.

(Universal check dated October 18, 1935, to Morgan S. Kaufman in the sum of $25,000 was marked Amici Exhibit 7.)

Mr. Thiess: I wish to offer as Amici Exhibit 8 the receipt from Morgan S. Kaufman for the $25,000 payment under date of October 22, 1935.

(Receipt dated October 22, 1935, for $25,000, signed by Morgan S. Kaufman, was marked Amici Exhibit 8.)

753

Mr. Thiess: I offer in evidence as Amici Exhibit 9, letter from B. G. Lenske to W. M. Behrens, under date of March 17, 1936.

(Inter-office correspondence memorandum dated March 17, 1936, to W. M. Behrens from B. G. Lenske, was marked Amici Exhibit 9.)

754 *W. Meredith Behrens—For Amici Curiae—Direct.*

By Mr. Thiess:

Q. I wish to show you, Mr. Behrens, a memorandum marked Morgan S. Kaufman, $10,000, and will you please state what that is. A. This slip of paper in the handwriting of our controller to which a handwritten date has been added in pencil, I don't know anything about, I don't recognize the writing.

Q. And what does it refer to?

Mr. Harris: What is the date?

755 Mr. Thiess: There appears to be a pencil notation of it.

Mr. Harris: You don't claim that was on the original memorandum?

Mr. Thiess: No, I don't.

By Mr. Thiess:

Q. Tell me what it purports to be. What does it cover?

Mr. Harris: Doesn't it speak for itself? He told you who wrote it.

By Mr. Thiess:

756 Q. Who wrote it? A. Our controller.

Q. What is his name? A. B. G. Lenske.

Mr. Thiess: I offer in evidence as Amici Exhibit 10 memorandum written by Mr. Lenske, the controller for the Universal Oil Company.

(Memorandum dated 3/18/1936, signed by B. G. L., was marked Amici Exhibit 10.)

Mr. Thiess: I offer in evidence as Amici Exhibit 11, check requisition under date of 3/18/1936 for the payment of $10,000 to Morgan S. Kaufman.

(Accounting department memorandum dated 3/18/1936, signed B. G. L., was marked Amici Exhibit 11.)

Mr. Thiess: I offer in evidence as Amici Exhibit 12 voucher for the payment of $10,000 to Morgan S. Kaufman under date of 3/18/36.

(Voucher for the payment of $10,000, dated 3/18/36, was marked Amici Exhibit 12.)

Mr. Thiess: I offer in evidence as Amici Exhibit 13 the back of the voucher of Exhibit 12. 758

(Distribution record re the payment of $10,000 to Morgan S. Kaufman, being the back of Amici Exhibit 12, was marked Amici Exhibit 13.)

Mr. Thiess: I offer in evidence as Amici Exhibit 14, check under date of March 18, 1936, covering the payment of $10,000 to Morgan S. Kaufman.

(Universal check dated March 18, 1936, to Morgan S. Kaufman in the sum of $10,000, was marked Amici Exhibit 14.)

Mr. Thiess: I offer in evidence as Amici Exhibit 15 a carbon copy of letter from the controller to Morgan S. Kaufman under date of March 18, 1936, referring to the payment of $10,000 to Morgan Kaufman. 759

Mr. Harris: It doesn't refer to it, it merely encloses the check, doesn't it?

Mr. Thiess: It covers the payment; if you don't like the word "refer", say covering the payment of the $10,000. That is the controller of the Universal.

(Copy of letter dated March 18, 1936, to Mr. Morgan S. Kaufman, from Universal Oil Products Co., was marked Amici Exhibit 15.)

760 *Colloquy*

Mr. Thiess: I offer in evidence as Amici Exhibit 16 letter from Mr. Behrens to Mr. Lenske under date of July 23, 1936, referring to the payment of $5,000 to Morgan S. Kaufman.

(Inter-office correspondence memorandum dated July 23, 1936, to B. G. Lenske, from W. M. Behrens, was marked Amici Exhibit 16.)

Mr. Thiess: I offer in evidence as Amici Exhibit 17 check requisition for the $5,000 paid to Morgan S.
761 Kaufman under date of July 27, 1936.

(Accounting department requisition dated July 27, 1936, for $5,000 to Morgan S. Kaufman, was marked Amici Exhibit 17.)

Mr. Thiess: I offer in evidence as Amici Exhibit 18 the voucher covering the payment of $5,000 to Mr. Morgan S. Kaufman under date of 7/27/36.

(A voucher dated 7/27/36, covering payment of $5,000 was marked Amici Exhibit 18.)

762 Mr. Thiess: I offer in evidence as Amici Exhibit 19 the back of the voucher Exhibit 18.

(Distribution record re the payment of $5,000 to Morgan S. Kaufman dated 7/27/36, being the back of Amici Exhibit 18, was marked Amici Exhibit 19.)

Mr. Thiess: I offer in evidence as Amici Exhibit 20 check under date of July 27, 1936, covering the payment of $5,000 to Morgan S. Kaufman.

(Universal check dated July 27, 1936, to Morgan S. Kaufman, in the sum of $5,000 was marked Amici Exhibit 20.)

Mr. Thiess: I offer in evidence as Amici Exhibit 21 a letter from Mr. Lenske, the controller of the Universal Oil Products Company, to Mr. W. M. Behrens, under date of July 27, 1936.

(Inter-office correspondence memorandum dated July 27, 1936, to W. M. Behrens from B. G. Lenske, was marked Amici Exhibit 21.) 764

Mr. Thiess: I offer in evidence as Amici Exhibit 22 letter from Mr. Lenske, controller of the Universal Oil Products Company, to Morgan S. Kaufman, under date of July 27, 1936.

(A copy of letter dated July 27, 1936, to Mr. Morgan S. Kaufman, from Universal Oil Products Company, was marked Amici Exhibit 22.)

Mr. Thiess: I offer in evidence as Amici Exhibit 23 a letter from Mr. Kaufman to the Universal Oil Products Company under date of July 29, 1936, 765 acknowledging receipt of the $5,000.

(Copy of letter dated July 29, 1936, to Universal Oil Products Company from Morgan S. Kaufman, was marked Amici Exhibit 23.)

By Mr. Thiess:

Q. Mr. Behrens, I hand you paper that I would like to have you identify as to what it purports to show. A. It is written in the handwriting of our controller.

766 *Colloquy*

Mr. Thiess: I offer in evidence as Amici Exhibit 24 a memorandum regarding the payment of $10,000 to Morgan S. Kaufman, written by the controller of the Universal Oil Products Company, Mr. Lenske.

Mr. Harris: There is a rubber stamp mark on it bearing the date of December 2, 1936, accounting department.

(Memorandum dated December 2, 1936, to Healy, by Mr. Lenske, was marked Amici Exhibit 24.)

767

Mr. Thiess: I offer in evidence as Amici Exhibit 25 check requisition under date of December 2, 1936, for the payment of $10,000 to Morgan S. Kaufman.

(Accounting department requisition dated December 2, 1936, for $10,000, to Morgan S. Kaufman, was marked Amici Exhibit 25.)

Mr. Thiess: I offer in evidence as Amici Exhibit 26 a voucher for the payment of $10,000 to Morgan S. Kaufman, dated 12/2/36.

(Voucher dated 12/2/36, covering the payment of $10,000, was marked Amici Exhibit 26.)

768

Mr. Thiess: I offer in evidence as Amici Exhibit 27, the back of the voucher Exhibit 26.

(Distribution record re the payment of $10,000 to Morgan S. Kaufman, dated 12/2/36, being the back of Amici Exhibit 26, was marked Amici Exhibit 27.)

Mr. Thiess: I offer in evidence as Amici Exhibit 28, check under date of December 2, 1936, covering the payment of $10,000 to Morgan S. Kaufman.

(Universal check dated December 2, 1936, to Morgan S. Kaufman, in the sum of $10,000, was marked Amici Exhibit 28.)

Mr. Thiess: I offer in evidence as Amici Exhibit 29, letter from Mr. Lenske to L. M. Healy, under date of December 2, 1936.

(Inter-office correspondence memorandum dated December 2, 1936, to L. M. Healy, from B. G. Lenske, was marked Amici Exhibit 29.)

770

By Mr. Thiess:

Q. Mr. Behrens, who is Mr. Healy? A. Mr. Healy is Mr. Halle's secretary in New York.

Mr. Thiess: I offer in evidence as Amici Exhibit 30, letter under date of December 2, 1936, from Mr. Lenske, controller of the Universal Oil Products Company, to Morgan S. Kaufman.

(Copy of letter dated December 2, 1936, to Mr. Morgan S. Kaufman, from Universal Oil Products Co., was marked Amici Exhibit 30.)

771

Mr. Thiess: I offer in evidence as Amici Exhibit 31 a letter from Mr. Healy to Mr. Lenske under date of December 4, 1936.

(Inter-office correspondence memorandum dated December 4, 1936, to Mr. B. G. Lenske, from L. M. Healy was marked Amici Exhibit 31.)

772 *W. Meredith Behrens—For Amici Curiae—Direct*

By Mr. Thiess:

Q. Mr. Behrens, can you identify the document I now hand you? A. That is also written in the handwriting of our controller.

Q. Do you know what it refers to? A. It has Mr. Healy's name on it, and it says, Mr. Morgan Kaufman, and his address in New York.

Q. Mr. Behrens, you are secretary of the Universal Oil Products Company, are you not? A. Yes.

Q. How long have you been secretary? A. Since 1932.

773 Q. You are a lawyer by profession, are you not? A. Not actively practicing.

Q. When was it in 1932 that you were elected secretary? A. I believe it was in February.

Q. And you have been secretary ever since? A. I have.

Q. Have you made a search for the memoranda, reports, correspondence, telegrams, and so forth, referred to under items 1, 2, 3, 4, and 5, A, B, and C, at pages 115 to 117 of the record? A. I have largely made that investigation myself, but, of course, some part of it has been done under my direction, and files that were not under my control and were not available to me, and so on, but a search has been made, and I am sure it has been thorough.

774 Q. Can you produce those papers? A. There isn't anything to produce other than what is here. There is one entry in the New York office diary which I did not bring with me. I discovered it this morning. That is a diary which is kept by the various stenographers outside the Universal office.

Q. What do you mean? A. I mean the girls, the general staff outside in the New York office, and that entry consists of two lines, Mr. Kaufman telephoned, Mr. Kaufman called.

By Mr. Harris:

Q. What date? A. On the 22nd of October, 1935.

By Mr. Thiess:

Q. And what is the other one? A. They are both dated the same, just two lines in the diary, and there is no reference to Kaufman at all in my personal diaries, all of which I have with me for the period from 1932 through 1937.

Q. And this entry that was made by the stenographer, as you say, outside, was that placed in the diary? A. Well, it is a receptionist's record of who was in and out of the office during the day.

Q. And that would mean Mr. Kaufman made a call on the telephone? A. The first line is Mr. Kaufman telephoned, and the next line is Mr. Kaufman called; that means he came into the office. 776

Q. Are you personally acquainted with all the lawyers who represent the Universal Oil Products Company in the case of Universal Oil Products Company vs. Root? A. Did you say "all"?

Q. Yes. A. In the Root case?

Q. Yes. A. I think by now, I am.

Q. Do you know Mr. Morgan S. Kaufman? A. I have met him.

Q. When did you first meet Morgan S. Kaufman? A. I believe the first time I ever met him was on the 22nd of October, 1935. 777

Q. That is the first time you met him? A. I believe so, as far as I have been able to recall. I have no recollection of meeting him before that time.

Q. Do you remember when and where you met him at that time? A. In Mr. Halle's office.

Mr. Harris: May I interject at this moment, Your Honor? I, of course, haven't any objection to any examination which will get the matter forward, but it seems to me rather useless just to go over the same matter that is already covered in the exhibit of Mr. Behrens' testimony before the Grand Jury.

778 *W. Meredith Behrens—For Amici Curiae—Direct*

Mr. Thiess: I don't expect to do that.

Mr. Harris: All right. So far you have just covered the same material. Perhaps this is merely preliminary.

By Mr. Thiess:

Q. What is your recollection with respect to the conversation that you may have had with Mr. Kaufman at that time? A. In Mr. Halle's office?

Q. Yes. A. No conversation at all with him except to say, "How do you do".

779 Q. When did you meet him next? A. I may have seen him in November or December in the office in New York, but I can't tie that up, and then I had a long session with him in January or February of 1936, maybe a day and a half.

Q. Now, you refer at this time to the fact you believe you met him in November or December of 1935. Have you any recollection of any conversation you had with him at that time? A. I had none with him. I may have seen him in the office and said, "Hello," to him, or something like that.

Q. Do you know why he happened to be in the offices of Universal Oil Products Company? A. No.

780 Q. That is where you saw him, was it? A. Yes.

Q. And you know of no other time when you met Morgan S. Kaufman? A. Subsequent to the January meetings I may have seen him once or twice, but where and under what circumstances, I don't recall now.

Q. Will you please state, if you know, when Morgan S. Kaufman was retained by the Universal Oil Products Company for this Root litigation. A. I have no knowledge about that.

Q. When were you first advised that he was retained? A. I don't think I ever was until I was told to get a receipt from him.

Q. That was the first time that you knew that Morgan S. Kaufman was retained? A. I think that is right.

Q. And when was that? A. At that same date, October 22, 1935.

Q. At the time that you got this receipt from him, you had quite some talk with Mr. Kaufman, didn't you? A. No, not at that time.

Q. You don't remember any conversation that you had with Mr. Kaufman as of that time? A. At that time, none.

Q. All you did was to get the receipt, and Mr. Kaufman left? A. That's right.

782

Q. Now, were you present in New York in the offices of the Universal Oil Products Company when counsel were preparing the brief in the Root case when Mr. Morgan S. Kaufman was there for the afternoon, as it was discussed and referred to yesterday? A. When was that?

Q. It was late in 1934, I think. I don't think the date has ever been fixed. That is one of the things I wanted to fix. A. I can't tell you whether I was or not. I can tell you where I was on a given date, naturally, whether I was in New York or not, but whether I was there all through the preparation of that brief, I can't answer.

783

Q. No, I am not trying to have you remember the entire preparation of the briefs, Mr. Behrens. The only thing I have in mind, as I understand the testimony of the witnesses yesterday, they inferred that Morgan S. Kaufman was only in the offices of the Universal Oil Products Company at one time prior to the payment of his fee, and that was when they were preparing this brief on appeal in the Root case. A. I can testify that the larger part of that brief was prepared in the New York office, but outside of that, I don't know.

Q. All I want to know is did you meet Mr. Morgan S. Kaufman on that day when they were preparing this brief. A. I have no memory on that. I was a proof reader on that brief job, that is about all I was.

784 *W. Meredith Behrens—For Amici Curiae—Direct*

Q. And you have no memory of his being there? A. No.

Q. I believe you stated that you had a meeting with Morgan S. Kaufman for about a day and a half. A. I think that is right. It may have been only one day, but I think it ran over into the second day.

Q. And when was that? A. As far as I have been able to fix it, some time in the middle part of January.

Q. Of what year? A. 1936.

Q. And where was the meeting? A. In the New York office.

Q. At Universal Oil Products Company? A. Yes.

785 Q. And who else was there? A. I recall nobody else other than the two of us.

Q. What was the substance of the matters under discussion for this day and a half? Will you please give us the substance? A. Well, I think I probably talked three or four hours on the general pattern of all of our litigation, and then turned and started to develop for him the whole background of our situation with the Doherty Company, that is, Cities Service, Empire and the other subsidiaries of the Doherty Company.

Q. And is that all you discussed with him at that time? A. No, one of the main problems in that situation was the bringing of cases, where they should be filed. There was

786 some discussion as to whether we could sue in the Middle District of Pennsylvania, or whether we could sue in the Eastern District of Pennsylvania. We could get Crew-Levick, as you probably know, at either one of those two places, one where they were operating and the other the district where they had their main office.

Q. Was there any conversation with respect to Mr. Morgan Kaufman's fees? A. That was not in my province and not my resposibility.

Q. You never talked to Morgan S. Kaufman about the fees he was to get? A. Never.

Q. And have you got an entry in your diary with respect to this meeting with Morgan S. Kaufman? A. No, sir.

Q. This meeting lasted, as you say, for about a day and a half? A. Yes.

Q. And you have no entry in your diary respecting that? A. No.

Q. Can you account for the fact that you have no entry in your diary? A. I think so, yes. We were settling the Mid-Continent situation at that time, and I was working a lot of days and a lot of nights, and my diary is pretty bad there for a period of about four weeks. There was another situation in back of that which was about to be settled, and I was 788 just remiss. This diary I keep myself.

Q. The purpose of your keeping your diary is to keep track of your activities? A. Primarily my whereabouts, Mr. Thiess, more than anything else.

Q. Don't your diary entries show the matters on which you were engaged on these various dates? A. No. I am on a salary, I don't have to send bills.

Q. And you do not keep track of what you work on? A. I haven't kept a time record in the company until two years ago. At that point I began to keep an accurate time record of everything I worked on. Up to that time I never kept any time record whatsoever. 789

Q. Doesn't this diary show, without showing the hours, the particular matter that you were active on, as well as your whereabouts? A. Sometimes it does and sometimes it does not.

Q. But notwithstanding the fact—— A. I am talking about the period now, of 1935 and 1936. As I have grown up and become of age, I have become a little more careful about my diary.

Q. And notwithstanding the fact you have no such diary entry, you are certain about this day and a half meeting? A. I know it because of the amount of time we spent on

790 *W. Meredith Behrens—For Amici Curiae—Direct*

it and the amount of time I had to spend to give him that whole picture.

Q. You say give him the whole picture; can you state a little more specifically what you had in mind by giving him the whole picture? A. Well, beginning in about 1930, which is the product of study and not of knowledge, since I came to the company in 1931, one of our major infringement situations was the Doherty situation. We had had repeated infringement investigations made with a view to finding out in as exact detail as possible what their operations were, and where; there had been numerous conferences between their
791 executives and ours, their lawyers and ours. There is an entry in Mr. Belknap's diary read here yesterday concerning a meeting between him and Mr. Halle and Mr. Borden. Mr. Halle had been prodding the lawyers to get those cases started, and he wanted a prompt decision, or, at least, prompt action in the cases. That was the main thing we discussed, about where best we could get prompt action and where the calendar was not too badly clogged.

Q. In view of the fact that Morgan S. Kaufman is not a patent lawyer, a specialist in the patent law, and his inactivity in the Root case, you didn't discuss with him at that time, did you, the merits of this litigation? A. Of this liti-
792 gation?

Mr. Harris: Which litigation?

Mr. Thiess: The prospective litigation.

The Witness: I am sure he saw the list of patents that we planned to sue on, and I am sure I discussed with him whether it would be better to have two patents in suit, or six, and things of that nature, which are always a problem.

By Mr. Thiess:

Q. You discussed that matter with Mr. Kaufman? A. Not the details of the patents—I am not a patent lawyer,

either—but the numbers of the patents, and whether, for example, to sue on two or start with six and then dismiss two or three.

Q. Well, the question of suing on those patents, Mr. Behrens, is pretty much a question as to whether or not those patents are infringed, and that is a technical matter, isn't it? A. Well, the infringement reports were before us at the time.

Q. You discussed with Mr. Kaufman whether in view of those infringement reports that were before you what patents you thought it advisable to sue on? A. No, whether to sue on two patents or to sue on six in the first instance in the 794 bill, things of a general nature which are tactics and not patent law.

Q. Now, in your testimony before the Grand Jury in 1940 you stated that you knew of no friendship that existed between Morgan S. Kaufman and the Judges of the Third Circuit Court of Appeals except as you had recently seen it in the newspapers. A. That's right.

Q. Can you tell me what newswpaper you saw this in? A. The World Telegram, wasn't it?

Q. I don't know. A. I am reasonably sure it was the World Telegram.

Q. And do you know what date that was? A. No. 795

Q. Have you any idea of approximately the year and the month? A. I haven't the faintest notion.

Q. Have you any recollection of the substance of that notice? A. Now, no.

Q. You merely remembered that some time you saw the notice? A. They may not even have referred to Mr. Kaufman, but I do know that they referred to Judge Davis.

Q. Did you at any time attend any conference in New York of the lawyers in which the question was discussed respecting the placing of Morgan S. Kaufman's name on the brief to be filed before the Appellate Court in the Root

case? A. I wouldn't have been in such a discussion at that time.

Q. And I understand from your testimony that the first you knew about the payment to Morgan S. Kaufman of the $25,000 fee in the Root case was when you were asked to get a receipt from Mr. Kaufman? A. That is right.

Q. And who gave you the instructions to get the receipt? A. Mr. Halle.

Q. And what did he tell you? What was the substance of the conversation? A. Mr. Kaufman and I agreed on a fee of $25,000, take a proper receipt from him.

797 Q. Nothing was said about the character of the receipt, just get the proper receipt? A. Yes.

Q. Were you told as to the case to get the receipt for? A. I have no memory of that.

Q. Nothing was told you as to what the substance of the receipt should be? A. No.

By Mr. Harris:

Q. You mean, "No", or you don't recall? A. I don't recall.

By Mr. Thiess:

798 Q. Did you at any time discuss with Morgan S. Kaufman the fees he was to receive in the Crew-Levick litigation? A. No, that was not in my province, either.

Q. If I remember your testimony correctly, before the Grand Jury you stated that the payment of $35,000 to Mr. Morgan S. Kaufman would have been a bad precedent to the other three senior attorneys. Who were the other three senior attorneys whom you referred to? A. I must have referred to Haight, Morris, and I suppose Hall.

Q. What was your thought when you said that this would be a bad precedent as to these other three senior attorneys?

A. I stated before the Grand Jury that was an impression, Mr. Thiess, and Mr. Halle is here.

Q. Well, you got the impression, and why did you get that impression? A. I don't know, I just had it.

Q. You have no explanation to give us? A. No.

Q. Did you at any time ever discuss Morgan S. Kaufman's retainer in the Crew-Levick litigation with other counsel in Universal Oil Products Company? A. No, that was never done.

Q. Did you discuss it with any of the officers of Universal? A. Except to the extent I had been instructed by Mr. Halle to get a check for a certain amount; there was no discussion. 800

Q. Now, at the time the District Court handed down the decision in the Root case, did you get a copy of that decision immediately after it was handed down, and did you study it? A. Yes.

Q. And is that also true after the opinion was handed down by the Court of Appeals in the Root case? A. Yes.

Q. Did you discuss the substance of the opinions handed down by the Court of Appeals, with Mr. Halle or any other officers of the company, or with counsel employed by Universal Oil Products Company? A. You mean the technical substance, the contents of the opinion?

Q. The contents of the opinion. A. I work in the business end, Mr. Thiess, and I think the last line is all that we were really interested in. 801

Q. You don't remember discussing that opinion? A. The technical contents, no.

Q. With either Mr. Halle or any of counsel, or any officer of the Universal Oil Products Company? A. Undoubtedly I heard discussions with one or more of the individuals you include in that group of thirty men in your question, either of the meaning of the word "vaporization," or something else. I have undoubtedly been in discussions of that type

Q. I am just referring to the opinion itself at the present time. Do you remember discussing it with Mr. Halle? A. The last line, yes.

Q. Do you remember discussing anything else in the opinion, with Mr. Halle? A. No.

Q. Do you remember discussing it with any of the senior counsel? A. I have undoubtedly had discussions with them about the contents, or listened to what their views were.

Q. Do you remember discussing this opinion with either Mr. Halle or any of these counsel shortly after the opinion was handed down? A. Oh, I am sure there were discussions
803 along that line.

Q. The opinion was of a very vital interest to you, and the officers, and the counsel of Universal at the time it was handed down, was it not? A. Yes.

Q. And shortly after it was handed down didn't you have a conference to discuss the opinion with Mr. Halle and others? A. Not the contents, but the use that could be made of the opinion.

Q. You know, do you not, that a copy of this opinion was sent to practically all of your licensees and prospective licensees shortly after it was rendered by the Court of Appeals in the Third Circuit? A. That is correct.

804 Q. Did you have anything to do with that? A. I am sure I ordered at least some of the copies that were sent out by the clerk.

Q. Did you have it re-printed to send out? A. By the clerk, yes. We are talking now about the Court of Appeals' opinion?

Q. We are talking now about the Court of Appeals' opinion. A. By the clerk, yes.

Q. With whom did you discuss the matter of sending out this opinion to your prospective licensees?

Mr. Harris: Just one moment. I don't know quite where these questions are leading. It doesn't seem to be material.

Mr. Thiess: I think it is quite pertinent, Your Honor.

Mr. Harris: I hope we are not going to get into a re-trial of the merits of the Root case.

Mr. Thiess: Not at all.

Mr. Harris: I can't see where these questions are leading.

The Master: I don't think it is very material, but I think I can discriminate against that which is and is not.

The Witness: May I have the question, please? 806

(The question was repeated by the reporter as follows:

"Q. With whom did you discuss the matter of sending out this opinion to your prospective licensees?")

A. I didn't have those discussions. I may have sat in them, but I didn't have them. That is Mr. Halle's discussion, undoubtedly, if any.

By Mr. Thiess:

Q. But you have no recollection of sitting in on it? A. No, I don't. 807

Q. Have you any recollection as to when the last payment was made to Morgan S. Kaufman in any litigation and for any purpose for the Universal Oil Products Company? A. The vouchers in evidence will show.

Q. There were no payments made after that time? A. None.

Q. Is it your recollection that the total amount paid to Morgan S. Kaufman by the Universal Oil Products Company in this litigation in which he was retained by Universal was $50,000? A. That is my knowledge that that is the total amount; I know it.

Q. Is Mr. Kaufman still an attorney of record in the Crew-Levick case? A. I haven't the faintest notion.

Q. You don't know whether his appearance was withdrawn? A. I don't.

Q. Is Mr. Kaufman attorney of record for Universal in any other case, to your knowledge? A. I don't know.

Q. When did you last see Mr. Kaufman? A. I think sometime in '36, probably.

Q. I have one more question I want to ask you, and that is it was called to my attention that in one of the answers that you made, Mr. Behrens, you said that "when I became
809 of age I kept a more accurate diary." Now, that wasn't meant literally, was it? What is your age? A. I am thirty-nine. I meant with Universal I was a handyman during those years doing what I could and where I could what I was asked to do, and those times I am talking about are '32, '3, '4, and '5.

Q. Did you at any time send any papers of any kind whatsoever to Morgan S. Kaufman which pertain to the case of Universal versus Root? A. There is nothing in the files to so indicate, and I have no recollection that I did.

Q. Did you at any time send him any papers referring to the litigation of Universal versus Crew-Levick? A. No,
810 that was not my province. Those copies would come to us from the lawyers.

Mr. Thiess: That is all.

Cross Examination by Mr. Harris:

Q. Now, Mr. Behrens, you are an officer, and during the entire period under question have been an officer of the Universal Oil Products Company, have you not? A. Yes, sir.

Q. I want you to tell me categorically without any equivocation or reservation whether you know of any impropriety

in the relationship between Morgan S. Kaufman and your company, or any of its officers, agents, employees, and attorneys or any member of the Circuit Court of Appeals in this Circuit. A. Absolutely none.

Q. Did you ever hear any discussion among anyone whatsoever in the world prior to the time the matter was brought up here that Mr. Kaufman had been hired or engaged by Universal or by anyone representing them, to perform services of an unethical nature as a lawyer? A. No.

Q. Did you ever hear any discussion, or hear of it in any form directly or indirectly that Mr. Kaufman was paid for services other than legal services? A. No. 812

Q. Even though those services were slight or negligible? A. That is correct.

Q. Do you know of any payment or any promise of payment that was made to Mr. Kaufman for any services other than legal, no matter how slight or negligible they may have been? A. No.

Q. Do you know of any promise of such payment or reward? A. No promise that I know of.

Q. Did you ever hear anyone discuss Mr. Kaufman in any sense—I mean anyone connected with your company, or any of its officers, agents or attorneys—discuss Mr. Kaufman in any connection other than as counsel in the ordinary sense and within the bounds of propriety and legal ethics? A. No. 813

Q. Mr. Behrens, prior to becoming employed by and an officer of the Universal Oil Products Company what had been your legal experience? A. I worked four and a half years with Cravath, deGersdorff, Swaine and Wood, of New York.

Q. And before that time you graduated—— A. Before that I graduated from law school and went directly to Cravath.

Q. Where did you go to law school? A. Columbia.

Q. Where did you go to college? A. Harvard College.

Q. Were you recommended to Universal Oil by some member of that firm, Mr. Whitney, possibly, or Mr. Swaine? A. Mr. Whitney or Mr. Swaine; I can't tell you which.

Q. You were asked whether you discussed Mr. Kaufman's fee with Mr. Halle or with anyone else, and you said you had not. Did you make a practice of discussing the fee of any lawyer with other counsel in any case or with Mr. Halle? A. Never.

Q. First limit—— A. With other counsel it has never been done, to my knowledge, by me.

815 Q. So far as you know, was it the general practice for other counsel in the case to pass upon what another counsel in the case asked or received? A. Certainly not.

Q. You did discuss with Mr. Halle from time to time other lawyers' bills, or did you just hear about what they were getting, from him? A. Well, on occasions bills would come in and I have taken them to Mr. Halle for approval, and he has undoubtedly said, "What do you think?" in recent years, but at that time——

Q. "By that time" you mean 1932, '3, '4 and '5? A. Yes. Mr. Halle had those all under his own control and never consulted anybody, so far as I know.

816 Q. So, there was nothing unusual in your not having discussed Mr. Kaufman's fee with Mr. Halle prior to October 22, 1935? A. Mr. Halle always gave the answers on those.

Q. There was nothing unusual in this omission? A. No, sir.

Q. Did you discuss the terms of Mr. Kaufman's retainer with Mr. Halle or with anyone else? A. No, sir.

Q. Did you learn at or about the time the last $10,000 was paid to him that that was for services to date plus a retainer for 1937? A. That is the December payment?

Q. Yes. A. I don't know whether I got the check or not, but from the voucher it is so indicated.

W. Meredith Behrens—For Amici Curiae—Redirect 817

Q. Did you understand that after that payment his services were not to be subject to a fixed retainer, but to be on a quantum meruit basis? A. I had no understanding; as I recall, I learned it somewheres that when Mr. Halle agreed to make that payment, that that was the end of the fixed retainer.

Q. Mr. Halle reminds me that you did have some discussion about attorneys' fees in small collection cases you might send out to lawyers in Oklahoma. Those were—— A. $250, $500, $750, things of that nature, perhaps, where there was a local situation and Mr. Halle gave me instructions to follow through and collect. 818

Q. I believe you were asked a question when you first heard of an alleged impropriety on the part of Judge Davis or Mr. Kaufman, or some relationship between them, and you said that you couldn't fix a time, but that you thought you got your information in the first instance from the World Telegram. Do you recall that answer? A. Yes.

Q. I ask you whether or not that was not certainly after the year 1937? A. Oh, I can fix that kind of a date for you. It was after I moved to Chicago in December of 1939.

Mr. Harris: All right, that is all, sir.

819

Redirect Examination by Mr. Thiess:

Q. These questions that were asked you with respect to any impropriety, as I understood your testimony, you had nothing to do with the engagement of counsel and the fees that were to be paid, and what they were to do, did you, in your capacity as secretary? A. That is true except some of these minor collection matters and the minor licensee-licensor relationships. I have there, after consultation, been directed by Mr. Halle to get a good lawyer in that area, or from Oklahoma City or Fort Worth, wherever they happened to be, or if I have been in the field and wanted local counsel

I have on occasion been authorized by Mr. Halle to retain them in the field.

By Mr. Harris:

Q. That is in small matters? A. In small matters, or where I wanted to go into questions of local law, or things like that, and Mr. Halle would permit me to get the price before I hired them.

By Mr. Thiess:

821 Q. You say that the first information you had respecting this investigation of Morgan S. Kaufman and Judge Davis was the knowledge you got from the paper. Can you give me a date that you may know of that the F. B. I. first made an investigation of anybody in connection with Universal? A. I haven't the faintest knowledge what the date was, Mr. Thiess.

Q. You couldn't place it as to year? A. No.

Q. You wouldn't know whether it was before or after you saw this notice in the paper? A. No.

By the Master:

822 Q. Mr. Behrens, there has been introduced as Amici Exhibit 8 a receipt of Morgan S. Kaufman which seems to be very informal in character. Is that the kind of receipt you usually took in cases of that kind? A. We don't have any regular receipt forms in the company as far as I know, sir. This was done in New York. I remember the receipt very well because I told Mr. Kaufman to write it out himself in his own handwriting. It was done in the outer office on a table that is there for deliveries, a counter. After meeting him I walked out there to the receptionist, asked for a sheet of paper, and handed it to him and told him to make out a receipt.

Q. That is his handwriting? A. Yes, this was written by Mr. Kaufman. I was there and watched him write it.

Q. There is one additional question I would like to ask. Did you obtain receipts for payment of fees from any of the other lawyers engaged by Universal? A. I don't recall any, Mr. Thiess.

Q. This is the only one you remember that you ever took? A. Yes. You see, that check was delivered without any voucher attached to it. We don't do that normally. There was no covering letter to Mr. Kaufman, there was nothing to indicate what the check was for without the receipt except 824 in our books.

Q. Do you know why this transaction was conducted that way without a covering letter? A. It has been done before with other lawyers. I don't know why this one was done this way.

Q. Did you get a receipt from the other lawyers when it was done that way? A. No, not necessarily. I have no knowledge of any other receipt from a lawyer. Perhaps there are some from some of the western fellows, but I just can't recall.

Recross Examination by Mr. Harris:

825

Q. Mr. Behrens, don't you usually receive bills from lawyers, and that would show what the services covered are? A. That is right. In this case there was no record.

Q. No bill? A. No bill.

Q. And Mr. Halle told you the circumstances with respect to that? A. Yes.

Redirect Examination by Mr. Thiess:

Q. This check, Amici Exhibit 7, doesn't that have attached to it some sort of a notation as to what the check was given for when it was issued? A. No. It is just a check, a four corner square piece of paper when it was issued, you see.

(Discussion off the record.)

826 *W. Meredith Behrens—For Amici Curiae—Redirect*

By Mr. Thiess:

Q. Mr. Behrens, is this check, Amici Exhibit 7, that was given to Mr. Morgan Kaufman for the $25,000 any different than any of the other checks that you sent out in payment of bills? A. Yes, in one respect.

Q. In what respect? A. A copy of this legend is normally attached to checks that are mailed from the Chicago office, not with all of this on it.

Q. The legend is what?

827 Mr. Harris: The legend at the bottom of Amici Exhibit 5, or at the top of Amici Exhibit 5?

Mr. Thiess: The legend reads 10/18/35.

The Witness: Legal services to date in connection with the Root case and pending matters. Normally if a check was mailed from the accounting division as per authority of Mr. Mitchell, it would not be on the copy that went out, but that would be attached with the enclosure that went out with the letter.

By Mr. Thiess:

Q. Why wasn't that done with this particular check? A. I don't know what happened to the check. I presume it was
828 sent to Mr. Halle, I don't know.

Q. Is it different from other checks? A. From those that we normally mail out in the routine payment of bills from Chicago.

By the Master:

Q. Mr. Behrens, just one other thing occurs to me. In your long conversation with Mr. Kaufman was the matter for discussion the place where the suits should be brought, whether in this District or that District? A. We had five places where we could sue them. The primary point in the discussion along that line was where we could get a quick

trial. At the same time we were considering applying for an injunction. We did discuss, I am sure, where there were over-technical patent judges sitting, and where there were judges sitting who would take a broad view of the large commercial use which we had.

Q. You could have sued in the Middle District or in the Eastern District? A. We found out we could not sue in the Middle District because there were no operations of the Pennsylvania company that were an infringement in that part of the State. The Crew-Levick Company as far as I learned, is not a Pennsylvania corporation. In any event, 830
we sued them where their operations were, which are down here on the river.

Q. You did sue in the Eastern District, then? A. Yes, sir. We could have sued them in Maine, and we could have sued them in the Northern District of Indiana for the operations at East Chicago, or we could have sued them in the Middle West, as I remember.

Q. That related to the Crew-Levick, not to the Root case? A. It had nothing to do with the Root case.

Recross Examination by Mr. Harris:

Q. His Honor asked you whether that was the principal 831
subject of discussion. Were there other matters that you discussed with Mr. Kaufman than the place where you would try the case? A. We discussed the whole of the Doherty situation, and that was only a small part of it.

Redirect Examination by Mr. Thiess:

Q. I would like to ask you in view of your last few answers the following questions. You did not apply for an injunction in the Crew-Levick case or the Empire case, did you? A. To my knowledge we have never applied for an injunction in any case, Mr. Thiess.

Q. And at the time you filed the Crew-Levick case you also filed the Empire case at Wilmington, did you not? A. I can't tell you whether they were filed at the same time.

Q. Well, about the same time? A. About the same time.

Q. And they were on the same patents? A. I don't know.

Q. You do not know that? A. Mr. Thomas would know that.

Q. You don't know that they ran contemporaneously? A. No, I know nothing about that phase of it at all. They were, as you know, two of the operating subsidiaries in the
833 Doherty system.

Q. And they were filed at substantially the same time? A. That's right.

Q. One in Pennsylvania and one in Wilmington? A. That's right. I remember one of the reasons why we didn't sue in Chicago was because we had other cases there that were at that point getting a little old.

Q. When did you find out you could not sue in the Middle District of Pennsylvania? A. Oh, I couldn't tell you that, Mr. Thiess.

Q. Was it before or after the conference that you had with Mr. Kaufman? A. I couldn't tell you that. That is the
834 type of preparation of evidence I very often do on the corporate side. That is one of the things that is often sent to me for work.

(Recess, 12:25 until 1:30 o'clock P. M.)

AFTER RECESS.

Present: Counsel as before noted.

HIRAM J. HALLE, having been duly sworn, was examined and testified as follows:

Direct Examination:

Mr. Harris: I want Mr. Halle, who has a statement to make under oath preliminary to the examination which he called to my attention a few days ago, 836
to do so at this time. Will Your Honor permit him to make a statement in advance of his examination?

The Master: I think so.

The Witness: I want to state, with full knowledge that I am doing it under oath, that my 1932 diary is missing. I want to state under oath I have not destroyed it, I have not concealed it, I have not given it to anybody to destroy, or to conceal. It has been missing for several years. I don't know where it is. I am sure it is misplaced and some day will turn up. I would give anything to get it back, but it is missing. I don't have it. 837

That is the statement I wanted to make. The only other statement I want to make is I have recently had an operation on my vocal cords. I have been forbidden to talk. I am going to do as much talking as necessary, but if my voice gives out it is only due to that physical condition, that is all.

By Mr. Thiess:

Q. I would say if you get into difficulty with your voice, I think to accommodate you we can adjourn. A. I only wanted you to know the reason for it.

838 *Hiram J. Halle—For Amici Curiae—Direct*

Mr. Thiess: I would like to offer in evidence as Amici Exhibit 32 the grand jury testimony of Mr. Hiram J. Halle.

(The grand jury testimony of Hiram J. Halle was marked Amici Exhibit 32.)

By Mr. Thiess:

Q. Mr. Halle, you are president of Universal Oil Products Company, are you? A. Yes.

Q. How long have you been president of the company?
839 A. Oh, since its beginning. The first year or two I was not president, but I was in charge, about 1914 to 1915.

Q. And as president you have at all times been the chief managing officer of that company? A. Yes.

Q. Now, have you made a search for the memoranda, reports, correspondence, telegrams, et cetera, referred to under Items 1, 2, 3, 4, 5, a b and c, at pages 115 to 117 of the record? A. Only my diaries, but not correspondence and things; that I have left to others to get.

Q. Did you find anything? A. In my diaries, yes.

Q. Will you produce what you may have found? A. If I may read from them.

840

Mr. Harris: Of course, your inquiry is directed only to entries respecting the matter before the Master.

Mr. Thiess: The matter covered in the subpoena.

The Witness: I will say to you this, that these diaries I have never taken out the fastenings, and they have not been changed since the day they were made. They had no covers on them, and in later years I put covers on them.

I have here February 8, 1933, stopped at Waldorf to see F. L. B., Belknap. He was ill at the time at the Waldorf.

March 2, 1933—do you want to come over here, Mr. Harris, and look at them?

Mr. Harris: I think perhaps I better not.

The Witness: March 2, 1933, Judge Haight phoned, that is all.

March 8, 1933, I went to Judge Haight's office in Jersey City to sign documents in Consolidated deal. That is the Sinclair Company with whom we made a large deal, and we went to New Jersey so that the deal would not be considered a deal in the State of New York, and I went over there to sign the documents. 842

Mr. Harris: I don't think that has anything to do with this matter, has it?

The Witness: Well, no, it has nothing to do with this.

Mr. Harris: I would limit myself to anything that has to do with the matter before the Master.

Mr. Thiess: That we have called for.

By Mr. Harris:

Q. The Consolidated deal has absolutely nothing to do with this? A. The Consolidated deal has absolutely nothing to do with this. I was noting my different conferences with 843 Judge Haight.

Q. We don't need that unless Mr. Kaufman is involved. A. Well, this is, I think, also Judge Haight regarding suit against Black Gold on March 28, 1933. I have an entry here among other things that Mr. Hamilton Root called. He was president—and still is, I think—of the Root Refining Company. I have no memorandum as to what was said. Is that pertinent?

Q. I don't see that it is, but go ahead. A. Thomas phoned regarding Judge Haight's illness, phoned Haight, is

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planning conference with Hall and conference at Atlantic City for writing reply brief. That is in the Root case.

Q. What date is that? A. March 28, 1933. April 14, 1933, phoned Hall regarding brief and argument.

Q. What case is that? A. Root case. April 21, 1933, Judge Haight phoned from Wilmington. It doesn't say what.

April 25, 1933, Thomas phoned from Washington. That doesn't say what.

April 28, 1933, Haight phoned; April 28, Judge Haight phoned regarding Root case and regarding coming to Pound
845 Ridge.

Q. Pound Ridge is your home? A. Pound Ridge is my home in the country, yes. He came out a week later with Mrs. Haight.

May 6, 1933—that is at Pound Ridge—Judge and Mrs. Haight called and had lunch.

May 12, attended Mr. Belknap's funeral; rode down from there with Mr. Whitney, Judge Haight, Reichmann and Alther.

By Mr. Thiess:

846 Q. Who is Alther? A. He is vice president of our company.

Q. Do you cooperate with him? A. Well, he is in charge of all the technical side of our work, yes. He doesn't have anything to do with the legal side, with litigation.

October 31, 1933, Judge Haight phoned regarding Delaware situation. That is all it states. That is in 1933.

By Mr. Harris:

Q. On November 16, 1933, you sailed for Europe, did you not? A. On November 16, 1933, I sailed for Europe on the "Majestic".

Q. And returned on January 17, 1934? A. Returned on the "Conte di Savoie" on January 17, 1934.

In 1934 I haven't had the time yet to go through it as carefully as I might, but I have here April 27, 1934, Judge Haight phoned telling of decision just rendered by Judge Nields our suit against Root Refining and Winkler-Koch. Great news!! Now, in 1934 that is all I have marked here.

I was in Cleveland on May 8; among other things, discussed contemplated suit against National Refining Company.

848

By Mr. Thiess:

Q. What date is that? A. That is May 8, 1934. Now, I have on May 3, 1934, Judge Haight phoned. I have on that same date that Thomas phoned. I have on May 4, 1934, Judge Haight phoned. I have on the same date Gary, Hall, Whitney, Judge Haight at office, conference.

I have here on June 19, 1934, meeting, an all-day session with lawyers Hall, Whitney, Thomas, Kingsland, Gary, Behrens present.

June 29, 1934, Haight phoned from Wilmington regarding Root bond—the bond that they were to put up for appeal and which resulted in our taking a mortgage on their refinery.

849

July 6, Hamilton Root called, discussed bond, new license, settling for old, and his Italian plan. He had some plans in Italy.

July 9, Gary at office, discussed new suits to be brought and National Refining Company's patents. Hall phoned re cash deposit and mortgage, Root under bond.

July 20, 1934, conference with Seguy, Gary, regarding filing lawsuits and selection of attorneys; that is, new suits to be brought.

Q. Gary and who? A. Gary and Seguy. July 26, Hall phoned from Washington regarding suits being filed.

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November 1, Judge Haight phoned.

November 8, Colonel Kingsland at office, Judge Haight phoned regarding—well, this is another case, that is the Skelly Jenkins situation and Hall's preparation of the Root case on appeal.

In the case of Burrell against Englestein, Seguy, Gary, Thomas, Haight and Hall at office December 13, 1934.

By Mr. Harris:

Q. That didn't have anything to do with the Root case,
851 did it? A. That must have been one of the other cases. These are just discussions of certain details in our proofs, or something of that kind.

Mr. Harris: I think you need only refer to something that is before the Master.

The Witness: Here I have got December 19th, Thomas, Seguy, Hall, Haight at office working on appeal in Root case. That is all I have in 1934.

Now, do you want 1935?

Mr. Thiess: Yes.

The Witness: January 7, 1935, hearing on appeal in Root case before C. C. A. at Philadelphia.

852 *By Mr. Harris*:

Q. Wasn't that January 27th? Or was it January 7? A. January 7.

By Mr. Thiess:

Q. Did you attend that? A. I did not.

Q. I might ask you another question. Did you get a report from your attorneys as a result of the argument in that case? A. I never got a report on any argument that was made. Talked about it, yes, but I was always interested in the decision.

I have January 8—this will interest Mr. Thiess—Frank Ginn, attorney for the National Refining Company and director, Cleveland, phoned if we would have the suit against National Refining Company dismissed; called him back in the afternoon and told him we could not change our plans.

April 15, Judge Haight called with Morgan Kaufman, attorney. That is the first entry.

Q. On the 15th? A. On the 15th, I have it in my diary Monday 15.

Q. That is April 15? A. 1935.

854

By the Master:

Q. Where would that be? In New York? A. Yes, that was in New York.

June 26, 1935, Hall telephoned, delightful news, decision Circuit Court of Appeals regarding decision sustaining both patents in Root case.

September 12, 1935, conference with attorneys——

By Mr. Harris:

Q. Pardon me, Mr. Halle. In August, 1935, do you have an entry regarding rehearing denied in the C. C. A.? A. What date?

855

Q. I don't know; some time in August. A. I doubt if I would enter that in my diary, but I will see if I have it. Do you know the date?

Q. August 6. A. No, I haven't got it down. I doubt that I would make that entry.

Q. September 12th? A. September 12, conference with attorneys, Judge Haight, Whitney, Thomas, Seguy, regarding program of today, that is legal program.

September 19, Judge Haight called, preparing reply brief application for certiorari in the Supreme Court in the Root case.

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October 15, Judge Haight called.

October 17, phoned Judge Haight.

Q. How about October 16, do you have anything there? A. October 16, oh, yes, Morgan Kaufman called.

October 17, phoned Judge Haight.

October 21, Judge Haight phoned regarding denial certiorari Supreme Court Root case.

October 22, Morgan Kaufman called. Later we had discussion with W. M. B. regarding prospective suits vs. Doherty.

857 *By Mr. Neuman:*

Q. Is that your entry in the book? A. That is my entry made at that time.

Tuesday, December 10, 1935, Whitney, Haight, Dwight, here regarding legal program and discussion Donovan letter.

Tuesday, December 31, 1935, Haight at office with Behrens. That is 1935.

Do you want 1936?

By Mr. Harris:

Q. Mr. Halle, would you mind passing up those diaries that you have gone through and let the Master see how they are kept? A. Your Honor, they are for your eye.

858

Mr. Harris: I will take care of them.

The Witness: All right.

By Mr. Thiess:

Q. Will you go through the 1936 diary, too? A. Denton, that is Judge Denton of the Mid Continent Company, and Rouzer—I think that is the treasurer—returned to the office in the evening with Behrens until 11:15 working over draft agreement, draft delivered to me at my apartment at midnight, that is January 17th, or the previous day, the 16th.

Q. 1936? A. They were in the office.

By Mr. Harris:

Q. What day was that? A. January 17, 1936. January 21, Whitney and Thomas at office most of day regarding final draft of agreement for settlement Mid Continent. Judge Denton and Mr. Rouzer called at 5:00 P. M., January 22, Thomas, Whitney, Denton, Rouzer at office. Agreement signed at noon and check paid, I think the amount was $1,000,000.

Q. Paid to whom? A. Universal.

Q. Universal didn't pay it? A. No, Universal received it. I know that was the consideration for the past infringement and a license contract for the future. 860

March 10, 1936, Morgan Kaufman telephoned. That is all the entry there is.

March 18, Morgan Kaufman phoned.

On June 8th, left with Behrens for Wilmington about 5:00 P. M. Haight and Schumann, one of his men, joined. In evening conference at Wilmington, Hall and Thomas present. That was, I am quite sure, on the Root matter.

June 9, 1936, court session 11:00 A. M. to 4:30 P. M.

July 2, 1936, Judge Haight phoned, missed connecting. I don't know what that means—oh, yes, he left for Maine at 2:00 o'clock, he phoned and I didn't get in connection with him. 861

Reichmann phoned regarding Brewster, Reed suit settlement.

Q. That is the Senator Reed episode Mr. Hall spoke of? A. Senator James Reed, this is the settlement of the suit for $1,000,000 against us for services, additional compensation.

By Mr. Thiess:

Q. Do I understand you to say that you paid him $1,000,000, or just that the suit was for $1,000,000? A. The suit was for $1,000,000, and in settlement we paid him $125,000 for additional compensation beyond his per diem

which he got currently, and it cost us aplenty to carry that litigation on. It ran for three or four years, and he won in the first round, I think.

Q. When you say he won in the first round, what do you mean? A. I think Reed in the court.

Q. Mr. Reed in the court won in the first round? A. I think in the first round. I am not absolutely sure, that is my impression.

July 20th, Judge Haight returning to Maine.

On July 22, I have here phoned Morgan Kaufman. I
863 must have phoned him; that is, I assume, the interpretation of phoned Morgan Kaufman. Whether he phoned me or I phoned him, I don't know, but it is peculiar the way I have it here. There are various entries, phoned Whitney, phoned Dwight; they are phone calls to me but not indicating what.

On August 12, I sailed on the "Queen Mary" for London, and returned here on the "Queen Mary" on November 2.

By Mr. Harris:

Q. Were those loose sheets in that diary kept while you were away in Europe? A. These are data regarding my European trip.

Q. All right, nothing there about Root? A. Nothing there
864 about Root.

Q. Or Mr. Kaufman? A. Not about Mr. Kaufman. Various phones from Judge Haight, December 1, 1936, Morgan Kaufman called.

December 2, phoned Judge Haight, discussed arrangements with Blenko—that is one of the other attorneys we took on who was active with us—and Fairchild. At the moment I don't even recall who Fairchild is.

Whitney phoned on the same date regarding his talk with Judge Haight regarding retaining Topeka lawyer, I don't know what suit.

By Mr. Thiess:

Q. That was undoubtedly the National suit, wasn't it? A. Probably the National Refining case.

Mr. Harris: I think it was Derby against Universal.

The Witness: You are right.

By Mr. Thiess:

Q. I don't know anything about that. You say called there at times; when you say called, do you mean telephone call? A. No, I mean called, personally called. I take it there may be a telephone call. 866

Q. When you say called, it means the party called at your office; when you say phoned, you mean called on the telephone? A. That is my interpretation of it, yes. Now December 3, Judge Haight and Mr. Kaufman at office before my arrival. When I got to the office Judge Haight and Mr. Kaufman were in conference in one of the rooms. I went in and said "Hello," or shook hands and withdrew. I didn't take part in any conversation there that I can recall at all.

By Mr. Harris:

Q. Anything in 1937? A. February 10, Judge Haight, Thomas and Whitney at office, 10:00 A. M., Judge Haight and Thomas remained during lunch, discussed litigation, especially National Refining case. 867

That has no direct bearing.

Q. Now, Mr. Halle, may I call to His Honor's attention my recollection is that there is no mention in the 1937 diary of Kaufman. A. In the 1937 diary.

Q. Is there anything about discontinuance of the retainer? A. No, we paid him for 1937. I told him at the time

there was no commitment beyond this. In 1938 Judge Haight took it up with me, and we discussed it, and I said no commitment with Kaufman, will you send word to him?

I don't know whether he did or did not, but there was no commitment, and I left it to him to leave Kaufman know, but there has been no commitment with him since.

The Master: There has never been any employment since?

Mr. Harris: I wouldn't say that; there was no fixed retainer.

869 The Witness: Oh, yes, he was still held in connection with the Doherty cases, but only as he would be called to contribute, I think.

By Mr. Harris:

Q. For what he earned? A. Yes, for what he earned.

Mr. Harris: In 1937 that is my understanding.

The Master: I understood the witness this morning to say there were never any payments.

The Witness: Never any payments, never any bills rendered, never any requests for payments.

870 Do you want me to continue through? There is nothing, I think.

Mr. Harris: I don't think it is necessary.

The Witness: I was in Europe that year. I will give you the dates. That was 1937.

Mr. Harris: While Mr. Halle is glancing at that, was Mr. German's appearance noted on the record? I think it should be noted. What are your initials, Mr. German?

Mr. German: W. P. Z.

Mr. Harris: What city?

Mr. German: Tulsa.

Mr. Harris: Tulsa, Oklahoma, general counsel for the Skelly Oil Company?

Mr. German: No, I am general attorney for the Skelly Oil Company.

Mr. Harris: Mr. German has been present at all the hearings.

Mr. Thiess: No; at the hearings in this session.

Mr. Harris: At the hearings in this session. May we note that, Your Honor?

The Master: Yes.

The Witness: May 5, 1937, I sailed for Europe on the "Queen Mary" and returned, arrived June 28th, 872 on the now ill-fated "Normandie".

By Mr. Thiess:

Q. As I understand it, those are the only documents that have not been produced by Mr. Behrens in response to the subpoena? A. Yes.

Q. And I gather, Mr. Halle, from the matters that you have read out of these diaries and the notes that you have made, that you keep a pretty accurate record of what is going on in your diary, what you do. A. Only in skeleton form.

Q. But you record rather faithfully, do you not, in your diary from day to day your activities during the day? A. 873 No, only where I am and people with whom I had conference, that is, worth noting in my diary.

Q. And as president of Universal Oil Products Company did you follow closely the various patent litigations in which your company was involved? A. I did.

Q. Who decided what suits were to be filed? A. I did.

Q. And who decided what lawyers would be employed in the various suits? A. I did.

Mr. Harris: Well, after Mr. Belknap's death?

The Witness: Well, I decided finally. I would like to change that in view of my recollection now. There

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were cases where counsel with the company decided, and employed lawyers. There were other cases where they discussed with me before counsel was employed. But come to think of it, in general, I think the counsel made their own selections.

You take the selection of Brewster, you take the selection of Hatcher, you take the selection of Blenko and other lawyers——

Mr. Harris: And Kaufman?

The Witness: And Kaufman. I had nothing to do with their selection or their employment, so, really, I
875 wasn't as important in that as I thought a moment ago that I was.

By Mr. Thiess:

Q. Mr. Halle, you were a witness in the case of Universal vs. Root, were you not? A. You ought to know that. You cross examined me.

Q. I am just asking you that for the record. A. Yes.

Q. And you were in attendance at this trial most of the time? A. For a good part of the time but not throughout.

876 Q. Just in order to ascertain your recollection, do you remember whether Mr. Belknap was present at the trial of the Root case in Wilmington, Delaware? A. I think very little. I don't remember that I saw him there at all, and he may have been there, but he wasn't taking an active part in the courtroom.

Q. You don't remember his being at Wilmington during that trial? A. At Wilmington?

Q. Yes, during that trial. A. I have no recollection whether he was or was not.

Mr. Harris: I think Mr. Thiess said do you recall his being present at Wilmington during the trial. You mean in the trial at Wilmington?

Mr. Thiess: Yes.

The Witness: Oh, well, that is different.

Mr. Thiess: I mean whether he was in Wilmington during the period that the trial was on, whether he saw Mr. Belknap there.

By Mr. Thiess:

Q. Do you remember seeing him there? A. I may have seen him in the courtroom, but he wasn't there in constant attendance. We had a conference with him. 878

Q. In Wilmington? A. I don't know whether Wilmington or Atlantic City, or where it may have been.

Q. But you were in the Atlantic City conference?

Mr. Harris: Which one?

Mr. Thiess: The one just prior to the trial of the Root case in Wilmington that he was referring to.

The Witness: I think so.

By Mr. Thiess:

Q. Do you have any definite recollection of being there? A. Do you know the date of it? 879

Q. That would be somewhere around June, 1932. A. I haven't got the diary for that.

Q. You don't have any definite recollection? A. I have no definite recollection.

Q. Now, of course, you know Morgan S. Kaufman? A. Yes.

Q. When to the best of your knowledge was Morgan S. Kaufman retained by the Universal Oil Products Company for this Root litigation? A. I was informed by Belknap in 1932 that he had retained him.

Q. When in 1932 did Mr. Belknap inform you that? A. I can't recall what part of 1932 it was.

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Q. Can't you place it at any time of the year? A. I can't even place it at any time of the year. It would be a guess if I did.

Q. You couldn't even place it with regard to spring, summer, fall or winter? A. No, it would be a guess.

Q. You didn't know, then, whether or not Mr. Kaufman was retained at the time that the Root case was being tried?

(Discussion off the record.)

A. My impression is that he was.

881 *By Mr. Thiess:*

Q. Do you know that he was at that time? A. I can't tell you absolutely, but that is my impression.

Q. Then your impression is not as you have stated just a moment ago that he was retained in the early part of 1932? A. With your bringing up the date of the Root trial, that fixes a point where it refreshes a recollection or an impression that it was before that time, before that time, before the Root trial.

Q. Then, as I gather your testimony at the present time, in view of refreshing your recollection, you say that Kaufman was retained some time during the period that the trial
882 was in progress? A. No, I didn't say that, and that is not what you asked me before.

Q. Will you please state it in your own words? A. That he was retained before the hearing in Wilmington on the Root case.

Q. He was retained before that? A. Before that, yes.

Q. Before any testimony was taken? A. Before the hearing, before the trial.

Q. By that, you mean before any testimony was taken in the case, in the Root case in Wilmington? A. I don't know how to differentiate a trial——

Q. I am just asking you whether that is what you mean. A. I don't get your distinction. When you go into a court-room you start taking testimony.

Q. Yes. A. It is before the trial started before Judge Nields.

Q. It was before that time that Belknap told you that he had been retained? A. That is my best impression today, yes.

Q. Do you know where he told you? A. No, I do not. We met constantly in Chicago, New York, wherever we happened to be.

884

Q. But you do not know whether anybody else was present at the time he told you? A. I have no recollection that anybody else was present.

Q. Do you know what Mr. Belknap told you at the time he said he retained Mr. Morgan S. Kaufman? A. Well, he had retained him because he thought he was a man that would be useful to us in our litigation. He didn't couple it up with any particular case except that I do think—and I won't state it as definite knowledge—that he was from Pennsylvania, and that in connection with our litigation with the Doherty interests, the Cities Service, Crew Levick, that he had knowledge and skill in connection with a trial of the case and deciding a question with respect to our litigation 885 that would be useful. That is generally what I have in mind.

Q. So that at the time that Morgan Kaufman was retained, Mr. Belknap, as you remember it, talked to him about this Crew Levick litigation? A. I don't know. I was not present when Mr. Belknap talked to him.

Q. But he told you he thought Kaufman would be of value? A. Would be of value in our litigation.

Q. And he told you that in this first conversation when he talked to you? A. When he told me about having employed Mr. Kaufman, yes.

Q. Did he tell you at the time that Morgan S. Kaufman was a general practitioner and not a patent lawyer? A. I don't recall, but he probably did.

Q. Did he tell you that he had no experience in oil refining, et cetera? A. I probably asked him is he a patent lawyer or a general lawyer, and he probably told me he was a general lawyer.

Q. And in what respect did he tell you that he might be of real value in these Cities Service suits? A. I don't think he went into any detail.

Q. At that time most of the Cities Service litigation had
887 been started? A. Had not started, but was under constant discussion, and I was crowding for the starting of those suits.

Q. Did he say anything to you about using Morgan S. Kaufman in the Root litigation? A. I don't recall.

Q. Then Morgan S. Kaufman's name in this conversation between yourself and Belknap was mentioned merely with the Cities Service litigation, as far as you remember it, and not the Root litigation, is that correct? A. It was general; it was in connection with our litigation, but I think the stress was laid on the Empire-Doherty suits that we were planning.

Q. And you don't remember his talking about the Root
888 litigation in that connection at all? A. I don't remember specifically, no.

Q. At the time that Mr. Belknap told you that he had engaged Morgan S. Kaufman, did he advise you as to the terms upon which Mr. Kaufman was engaged? A. Not specifically. He said he was a man who charges well.

Q. Is that what he told you? A. I don't really recall the conversation. I mean to say that he gave me an impression he was not just an incidental local lawyer.

Q. Did he tell you anything about definite terms that he had made with Mr. Kaufman? A. No, he did not.

Q. Did you ask him about [illegible] I may have, and I don't know. I really have no knowledge or recollection of it. I have personally hired lawyers and not asked them for their fees or their basis if I wanted a lawyer.

Q. Subsequent to this conversation that you had with Belknap regarding the retainer of Morgan S. Kaufman, did you discuss this retainer with any of your other counsel who were active in the Root litigation? A. No.

Q. When did you first discuss this retainer with any of your counsel that were active in the Root litigation? A. After Mr. Kaufman phoned me, after Mr. Belknap's death, he commented on Mr. Belknap's death and then asked how 890
we were getting along with our litigation and what the status of it was. I don't recall what I said about that other than I assumed that he knew that the Root case had a hearing and that at that time I don't think the appeal was perfected or tried.

Mr. Harris: You don't think the decision had come down?

The Witness: I don't think the decision had even come down, so there was nothing I really could tell him.

By Mr. Thiess: 891

Q. Let me ask you, you say Mr. Kaufman phoned you after Mr. Belknap's death. Was that the first time that you communicated with Mr. Kaufman in any way whatsoever? A. The first time he ever communicated with me or I ever talked to him or communicated with him in any way.

Q. And what was the substance of the conversation that you had with Mr. Kaufman? A. Well, it was mainly regarding regrets at the death of Mr. Belknap and the other was more or less incidental to it.

Q. You knew at that time, of course, that Mr. Kaufman had been retained? A. At that time I had been informed

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by Belknap, because he died on the 12th, and he informed me while he was living.

Q. And you knew at that time that no definite arrangements had been made as to retainer for Mr. Kaufman? A. I did not know that no definite arrangements had been made, but I wasn't informed by Mr. Belknap of any definite arrangements that he had made with Kaufman.

Q. Why was it, Mr. Halle, that at that time you did not make some definite arrangements with Mr. Kaufman as to his retainer? A. I didn't retain him, so it wasn't up to me to make the definite arrangements. Belknap retained him.

893 Q. Well, you knew he was retained? A. I knew that he had retained him.

Q. And you knew that there were no definite arrangements? A. I wasn't informed of any definite arrangements, and I didn't know how loose and open it might be, and I assumed when he became active that we would probably come to some definite arrangement.

Q. There was nobody in the employ of Universal, either officers or lawyers, except Mr. Belknap, who knew about the arrangements that had been made between Kaufman and Belknap—— A. I know of none who did, and I assume not.

Q. So that when Mr. Kaufman called you following Mr.

894 Belknap's death, the arrangements which Mr. Belknap may have made with Mr. Kaufman were entirely lost, as far as Universal Oil Products was concerned? A. I don't know what you mean by lost——

Q. Well, you have no record of it? A. Have no record of it.

Q. And you didn't consider it advisable at that time to make definite arrangements with Mr. Kaufman as to his retainer? A. Certainly not, nor with any other lawyers.

Q. When was the next time you saw Mr. Kaufman, the next time you talked to him, do you remember? A. I think it was after the Root decision.

Q. You mean the Root decision in the lower court? A. In Wilmington.

Q. Do you remember what date that was? Can you give the approximate date? A. That was '34, wasn't it?

Mr. Harris: The Root decision was April 27, 1934.

I think, if I may expedite it a little bit, the first reference in your diary to the next meeting with Mr. Kaufman, Mr. Halle, seems to have been April 16, 1935. That was, I guess, after the argument in the Circuit Court of Appeals.

Mr. Thiess: That is in his diary, but——

896

The Witness: Well, if it isn't in my diary I have no recollection of any other discussion or communication with him in the meantime.

Mr. Harris: April 16, 1935.

The Witness: 1935.

By Mr. Thiess:

Q. Is there any entry in your book respecting your conversation with Mr. Kaufman over the telephone after Belknap's death? A. I have read you all that I have.

Q. Then you have none? A. I have none at all.

Q. So that you might have had some other conversations with Mr. Kaufman that would not be entered in your diary? 897
A. No.

The Master: I think he means to say that the entry doesn't show what was said, it simply——.

The Witness: Recalled expressing sympathy about Mr. Belknap's death.

By Mr. Thiess:

Q. There is no entry in the diary? A. I want to volunteer this statement: I don't know the specific financial arrangements with Mr. Blenko, Mr. Brewster and Mr. Hatcher,

or any of those. I see the bills when they come in, and they get my approval, but I couldn't today tell you, if you asked me, what the details of the arrangements are with them for their services.

By Mr. Harris:

Q. Have you got April 16, 1935? A. I have April 15, 1935, that Judge Haight called with Morgan Kaufman, attorney.

899 *By Mr. Thiess*:

Q. Do you remember that particular meeting? A. I have no definite recollection of what was said at that meeting, a reference made to the litigation that was pending, and if you ask me to construct a story——

Q. I don't want you to construct a story unless you remember, Mr. Halle. A. Well, I can't remember anything that was said at that particular meeting. Undoubtedly reference was made to the Root case, and its status at that time.

Q. Is that the first time you met Mr. Morgan S. Kaufman? A. That is the first time I ever met him.

900 Q. And have you any recollection how long Judge Haight and Mr. Kaufman conferred with you on that date? A. I don't know that it was a conference, but I would say that they may have been there ten or fifteen minutes, I can't say, it may have been even longer. I have no recollection specifically of what transpired at that meeting.

Q. No recollection as to what was said? A. As to what was said at that particular meeting.

Q. Have you any recollection, Mr. Halle, of Mr. Kaufman being present at the offices of Universal Oil Products Company during an afternoon when the brief on appeal was being prepared? A. I have no recollection. I don't sit in

those conferences, they don't take place in my office, they take place in another room. Conferences go on and I don't know of them; I learn afterward there was a conference.

Q. I believe you have some entry there of the lawyers working on the brief on appeal, have you not, in your diary? A. Yes.

Q. And at those meetings where you have an entry in your diary, did you participate in discussions with the lawyers? A. I would listen at times, be in and out, just to get the drift of things.

Q. And you have no recollection of any meeting of lawyers at the offices of the Universal Oil Products Company in New York prior to the decision by the Court of Appeals at which Morgan S. Kaufman was present? A. I have no recollection. 902

Q. Did you ever discuss with Judge Haight or any of your other counsel the matter of the expediency of placing Morgan S. Kaufman's name on the brief on appeal? A. I never would enter into a discussion of that kind then or now. I have no judgment in the matter that is worth considering.

Q. And it was never mentioned to you at all? A. About his name being on or off the brief?

Q. On appeal. A. I have no recollection that it was ever discussed with me. I don't now know what names were on that brief. 903

Q. Is it customary for your lawyers to provide you with a copy of the brief that they file in their litigation? A. I am sorry to say, usually not before it is filed, but some time or another they let me see it, sometimes I have to ask them and then I read it at my leisure. It may be days or weeks later that I read it. I have one now that I haven't read. They are very interesting.

Q. Now, Mr. Halle, I understand from your grand jury testimony that Morgan S. Kaufman called you on the telephone on or about April of 1934. Have you any entry in your diary with respect to that conversation?

Mr. Harris: I can answer that no, there is none.
Mr. Thiess: All right.

By Mr. Thiess:

Q. Do you have any recollection of that conversation? A. It was on the phone?

Mr. Harris: No entry in his diary——

The Witness: I have a vague recollection of his phoning me saying he can use some money, and he is coming in one of these days to see me and I said,
905 "Come in and we will discuss it." That is my recollection of a conversation that took place at that time. Why it is not in the diary, I don't know.

By Mr. Thiess:

Q. And that is all you remember? A. That is all I remember; no discussion specifically over the phone of terms and conditions. I wouldn't discuss a matter of that kind over the phone, especially with a man I had never met, or I had never discussed those matters with.

Q. Mr. Halle, I believe you have that telephone conversation confused with a later telephone conversation in your
906 grand jury testimony in the fall of 1935. Do you remember that telephone conversation? A. Well, I think this conversation we have just referred to was general, that he said he could use some money, and that he would be coming in one of these days, and I said, "Come in and we will talk it over," and then he did, later. I don't know whether he phoned in advance of coming in or not, but he did come in, and we sat down and discussed it, and he told me what his understanding was of his compensation.

Q. And as I understand your grand jury testimony, you had three telephone conversations with Morgan S. Kaufman in 1935, and it was in the second telephone conversation that

he said he could use some money. Have you any recollection of that? A. I would say that was correct.

Q. Do you have any further recollection as to the substance of the conversation, of the second telephone conversation? A. There would be no specific thing, it would be only general. I wouldn't discuss over the phone any matters of that kind with him or anybody else.

Q. Now, after this last telephone conversation with Mr. Kaufman in 1935 where you say he said he could use some money, I understand that you met him in your offices. A. Yes.

Q. And talked to him about his fee, is that correct? A. 908
Yes.

Q. Now, have you any entry in your book as to that?

Mr. Harris: That would be, I think, about August, 1935, and I don't find any of those dates in your book. At any rate, it was prior to the September 12th meeting when you discussed it with counsel.

Mr. Thiess: Yes.

The Witness: Well, it must have been a specific conversation, because it enabled me then to take it up with Mr. Dwight and Judge Haight and Mr. Whitney in the way that I did. Otherwise, I wouldn't have known on what basis to discuss it with them. 909

Q. Will you please tell me what the substance of that conversation was with Mr. Kaufman at the time that he came in to see you? As I understand, that was some time in August of 1935. A. In 1935.

Mr. Harris: It would have been at least prior to September 12, 1935.

By Mr. Thiess:

Q. And that would have been the second time you met him personally. A. The second time I met him personally, yes. In April of 1935 I met him for the first time.

Q. How did it happen he came to see you at your office at that time? Did you ask him to come over? A. I don't think I asked him to come over. It was in pursuance of the telephone conversation that he could use some money, and would come in one of these days, and I said, "Come in and I will be glad to sit down and discuss it with you."

Q. Did you make prior arrangements with him? A. I don't recall whether he phoned me asking for an appointment. I wouldn't have phoned him asking him to come in. He may have phoned me, or he may have walked in unannounced, I can't tell you.

911 Q. When he came in to see you on this particular occasion, how long was he there? A. Oh, I can't tell you.

Q. Will you give to the best of your recollection the substance of that conversation? A. He said he could use some money and would like to have a payment, and as to what it should be, he said that when Belknap employed him he told him he would be very well taken care of, and that he felt that having served three and a half years under retainer and on call for any service that we might ask him to render—he said that he felt that the fee of $10,000 per year, $35,000 up to that time, was very reasonable.

That is in general what he conveyed to me. I think I asked him whether he had any specific understanding on the
912 basis of $10,000. I think he told me it wasn't definite, it was rather general, but he was to be well taken care of.

Q. At that time you knew that Mr. Morgan Kaufman hadn't done anything actively in the Root case? A. I didn't know whether he had done anything, but I knew he wasn't one of the active ones that was coming to my notice in participation in the litigation.

Q. And you knew he hadn't been at the trial? A. At the Root trial, you mean?

Q. Yes. A. Well, I didn't pay any attention to it, whether he was there or not. There were so many there sit-

ting in, as well as participating. Mr. German was there throughout the trial. He wasn't one of our attorneys.

Q. I mean counsel for the Universal. A. The room was full of counsel and experts.

Q. And you wouldn't even have remembered if counsel was there? A. I wouldn't have remembered if he was there or not, and not having met him and been introduced to him, I wouldn't know him if I saw him.

Q. Is that all that you remember respecting the conversation? A. No.

Q. Will you continue? 914

Mr. Harris: You interrupted.

The Witness: I told him that I thought considering that he had been called on for so little, if anything—not trying to give it to you literally, just the general nature of it—that it looked to me like a pretty stiff fee. I said I understand you are expected to render active service in connection with the Doherty cases, and in view of that, the continuing arrangement with you, I wonder whether some modification of your charge would be acceptable to you, and I think I indicated to him then that if $25,000 would be acceptable to him, I would recommend its payment 915 under all the circumstances.

Now, I don't recall whether he definitely said yes or not, or whether he was silent about it and left it for me to work out, but I then on September 12th took it up with Dwight and Whitney——

Mr. Harris: Judge Haight.

The Witness: Judge Haight, yes, the circumstances, and I said, "Here is a commitment with Belknap whom we all knew so well, we can't confirm it and we can't deny it, but if we don't pay, we may face another lawsuit."

916 *Hiram J. Halle—For Amici Curiae—Direct*

By Mr. Harris:

Q. Like the Reed case? A. Like the Reed case and the German case and the Holmes Hall case, who was master and sued us for additional compensation, and I said, "I would like if you would consent to its being paid," and they agreed it was better to clean it up and pay it, and then we discussed keeping him on for the year 1936, and I was authorized to arrange that he might be retained on that basis for 1936.

Now, I will say this to you voluntarily, if he had stood
917 firm on the $35,000 and said, "No, I won't take less," I would have recommended paying the $35,000 rather than stand a lawsuit.

By Mr. Thiess:

Q. Knowing you had referred to this Reed case and the other cases in which you had difficulty with respect to counsel as to their compensation, isn't it a fact, Mr. Halle, that this Reed and German difficulty, and others that you have mentioned, had occurred prior to the time that Kaufman called you up after Belknap's death? A. If you mean that those troubles had disappeared——

Q. No, had started. A. Had started?

918 Q. Yes. A. Oh, the Reed started in 1931, but wasn't settled, I think, until 1935.

Q. Now, knowing of these difficulties that you had with these other counsel regarding their compensation, and knowing that there had been no definite arrangements made with Mr. Kaufman, can you state why it was that you didn't at that time that Kaufman called you up after Mr. Belknap's death, make that arrangement definite with Kaufman? A. Make which arrangement definite?

Q. His arrangements as to his retainer by the Universal. A. You mean the arrangement for what period?

Q. For whatever period you were going to engage him. A. This was for past services, this was three and a half years. I couldn't make any arrangement with him. I could trade with him and deal with him, but he claimed it was $35,000 which was due him.

Q. I am referring to the date in 1933 when Mr. Kaufman called you up, and after Belknap's death; at that time there had been no arrangements made with Kaufman except by Belknap? A. Yes.

Q. Accordingly, there was no definite arrangement as to the terms on which Kaufman was engaged? A. Yes. 920

Q. Now, why was it, knowing that, that you did not at that time endeavor to make definite arrangements with Mr. Kaufman, knowing about these prior troubles you had with other counsel?

Mr. Harris: I ask the witness to give all his reasons as far as he wants to.

The Witness: I would today employ attorneys and not specifically make terms and conditions with them as I would employ a doctor for an operation, or for treatment, as I did only a few weeks ago, and I find throughout the years that we have had comparatively little trouble excepting in special instances, and then 921 they have been major troubles, but I am really not afraid of that if a man tries to take undue advantage.

It may be it was carelessness on my part, it may be it was inefficiency, maybe I should have been kicked off my job, but I just didn't do it, that is all, and with the enormous amount of litigation that we have had through the years and the cost of it, including our suit against the Standard Oil of Indiana which cost us cash out of pocket $1,800,000.00, and never was decided by the court.

922 *Hiram J. Halle—For Amici Curiae—Direct*

By. Mr. Harris:

Q. Never had an agreement with the lawyers? A. And never had an agreement with any lawyer that took part. That is where Reed sat in, and where German sat in, and there we had our troubles with them.

By Mr. Thiess:

Q. Now, Mr. Halle, there is no entry, as I understand, in your diary respecting a discussion with Mr. Kaufman as of August, 1935; there is an entry as of April, 1935? A. April,
923 I have read, yes.

Q. Isn't it possible that the date you talked to Mr. Kaufman regarding this conversation might have been in April, 1935, rather than August? A. No, I would say for this reason, that Judge Haight was not present when I had that discussion with him, and Judge Haight was present in the April conference, brought him in. That I know definitely.

Q. In the April, 1935, conference, that was held in the offices of Universal? A. Yes.

Q. And who was present? A. April?

Q. Yes. A. Judge Haight and Morgan Kaufman.

Q. As I recall your testimony, you do not have any real recollection of what was talked about? A. At which con-
924 ference?

Q. At that April, 1935, conference. A. Introduction, more, and getting acquainted with the man. "This is one of your staff."

Q. Now, at this meeting with Mr. Kaufman at which you stated you would pay him $25,000 for past services, did you definitely make the offer at that time to pay him $25,000? A. No, I asked him whether he would reduce his fee from $35,000 to $25,000 in view of the continuing arrangement for his services for the ensuing year.

Q. Did he at that time indicate he would accept the $25,000? A. I don't think he said yes or no, but he didn't

say no, and, therefore, I took my encouragement from that to take it up with Mr. Whitney and Mr. Dwight and Judge Haight.

Q. Now, you have introduced into this meeting the discussion with Mr. Kaufman about his continuing service? A. Yes.

Q. And that continuing service was to be in connection with the Crew-Levick litigation, is that correct? A. I don't think I specified it was to be——

Q. I am asking you. A. No, that is not correct.

Q. What was it for? A. Well, whatever litigation we would call on him for. 926

Q. What other litigation did you have? A. Oh, we had numerous suits. That was up to the lawyers——

Q. I mean in Pennsylvania. A. I wouldn't know without looking at the record.

Q. Did you have in mind using Mr. Kaufman in other litigation? A. I wasn't using him. It was up to the lawyers to use him.

Q. When you made an arrangement with Mr. Kaufman for this continuing service, was the arrangement made that he should be used in other places than in Pennsylvania? A. That he should be available for use.

Q. At any place? A. At any place. 927

Q. And that was the arrangement you made? A. That was my understanding of the arrangement.

Q. Do you know of any services that Mr. Kaufman rendered except as local counsel in the Crew-Levick case? A. I wouldn't know that. That was up to the attorneys.

Q. And the arrangement that you made for the subsequent services of Mr. Kaufman was at the rate that he demanded in the Root case; that is correct, is it not, $10,000 a year? A. Yes, on that basis.

Q. Did you discuss this $10,000 retainer for Mr. Kaufman for subsequent work with other counsel? A. With Mr. Dwight, Mr. Whitney and Judge Haight.

928 *Hiram J. Halle—For Amici Curiae—Direct*

Q. And will you give us the substance of the conversation at this conference with these gentlemen respecting the payment of this $10,000 to Mr. Kaufman for this subsequent service? A. Well, my discussion with him was that if he was to be retained—and that was up to them to decide and tell me whether he would be retained or not retained—whether it was acceptable to them and whether I was authorized for the ensuing year——

Q. Would you look to them for authorization? A. Only in a matter of a conflict of that kind; generally not, generally I tell them what I do after I have done it.

929 Q. And in this particular instance you asked for authorization? A. Because of this conflict I wanted them to know and guide me on it.

Q. Will you tell us the conversation? A. I told them what Kaufman's statement of what his understanding was, and interpretation of his talks with Belknap, and his opinion of what was a fair fee for him for the services of three and a half years, and his new continuing service.

Q. My question was particularly directed to what was said as to the payment of $10,000 a year for the continuing service. A. I can't tell you verbatim about it. It was on the general lines that we would continue him for another year

930 on the $10,000 basis.

Q. Wasn't the question discussed as to what services he could render? A. I didn't discuss that with him. He had been employed originally, and I assumed was qualified, and it was up to the attorneys to either accept him or turn him down.

Q. And you did not discuss with your attorneys at that meeting what services he might render for the $10,000? A. No, and it was mainly looking to future service and accumulations. I do recall that he said he was entitled, he believed, to compensation in connection with our settlement of the Mid-Continent case which he had heard of and known

of, and that the general situation justified his having some payment for that, I think.

Q. When did he ask you about that? A. What did he ask me?

Q. When? A. At this time when we discussed his $35,000, or $25,000 and the $10,000 retainer. I think it was that time, maybe it was a later date, I don't know now definitely. I don't make notes and burn these things into my mind whenever I have a conversation with an attorney.

Q. I well appreciate that, Mr. Halle, but this was a rather, I would say, unusual situation. A. Yes. 932

Q. With Mr. Kaufman, and I should think that you would have some rather fair recollection as to for what reason you continued a payment on a yearly retainer basis as local counsel when you were not willing to pay that amount in the Root case. A. What do you mean, were not willing to pay that amount in the Root case?

Q. Well, you paid him $25,000 rather than $35,000. A. I think a $25,000 payment over a three and a half year period when a man has been called upon to render very little service and $10,0000 a year for future services where you expect to call on him for very active service are two different matters.

Q. But, as I understand it, you did not discuss at this 933 conference—— A. I did not, that is up to the lawyers to call on him for as much service as they wanted. I was driving for the filing of these suits because we considered that that group were the greatest and most dangerous infringers that we had ever sued.

Q. At that meeting that you had with your counsel with respect to the $25,000 payment to Kaufman, was anything said by you or by any of the counsel with respect to the reasonableness of this payment to Mr. Kaufman in view of the fact that he had not rendered any service? A. Well, I guess we all thought it was a high charge.

Q. Do you remember anything that was said? A. No, I don't recall the language of it, but here he was making this demand saying it was based on an understanding, and if he would agree to, as I had indicated then that I thought he would, modify it from $35,000 to $25,000, I thought that would be a good solution of it.

Q. At this meeting did you advise all the counsel that were in this meeting—— A. Oh, no.

Q. Wait a minute—that Mr. Kaufman had not rendered any real service? A. I did not discuss it with them, and Thomas, and I think Hall were in the legal part of the con-
935 ference, but they were not in the discussions when I talked to Whitney and Haight. I don't discuss those things. I don't know whether Haight knows what Hall gets, whether Hall knows what Thomas gets, whether Thomas knows what Haight got, I never discuss those things as to what the other fellow gets.

By Mr. Harris:

Q. But you did discuss with Dwight and Whitney? A. This specific thing, that I did discuss because of the unusual nature of it. Here is a man coming in and saying, "Here, I have an understanding to get $35,000, and here you are ask-
936 ing me to take $25,000."

Now, I will say this to you, if they were not available I would have gone ahead and done it on my own and told them about it afterwards, thinking it was to the interest of the business to make settlement rather than face a lawsuit.

By Mr. Thiess:

Q. At the time that Mr. Kaufman came in and you talked to him about this payment of $25,000, did he say anything to you about the fact he was very anxious to get this money in the near future? A. No, he said he could use the money,

and couldn't I give it to him now. I said, "Yes," after I agreed with him, I said, "Yes, I will see that you get it right away."

That is one thing we are noted for, paying our bills promptly, even attorneys' bills.

Q. This payment to Mr. Kaufman of the $25,000 check was made on October 22nd, was it not? A. It was delivered October 22nd. I phoned to Chicago, or had my secretary phone out to have them issue a check for $25,000 to the order of Morgan S. Kaufman and send it to me. I don't think I gave them any details about it at all. They accept my instructions on those things. 938

Q. Was that check brought personally to the Universal offices by Mr. Mitchell? A. I don't know whether he came down and handed it to me or whether it came in the mail, I really couldn't tell you that.

Q. When you authorized the payment of this $25,000 check, you authorized the payment for legal services in connection with the Root case, did you not? A. I don't know whether I specified at that time or not; I know I authorized a check payable to the order of Morgan Kaufman.

Q. The voucher of Amici Exhibit—— A. Then I must have given him that much detail about it.

Mr. Harris: Why do you say that? Read it. 939

By Mr. Thiess:

Q. Legal service to date in connection with the Root, Winkler-Koch case and pending matters per—— A. Why didn't you put that in when you read it first?

Q. I asked you—— A. You are asking me for information, and it is misleading to keep that out from me when you read it. I don't forgive you for that.

Q. I asked you whether—— A. Why didn't you tell me it all?

Q. I was going to give you this in a minute. A. Al right, go ahead.

Mr. Harris: If the Master please, I suggest——

Mr. Neuman: Just a minute.

Mr. Thiess: Will you read the question and an swer?

Mr. Neuman: The question where Mr. Halle said he telephoned to Mr. Mitchell.

(The testimony was repeated by the reporter as follows:

941

"Q. Was that check brought personally to the Universal offices by Mr. Mitchell? A. I don't know whether he came down and handed it to me or whether it came in the mail, I really couldn't tell you that.

Q. When you authorized the payment of this $25,000 check, you authorized the payment for legal services in connection with the Root case did you not?")

The Witness: He read you what is on the record.

Mr. Thiess: Will you please show Mr. Halle that Amici Exhibit 4?

942

(Amici Exhibit 4 was shown to the witness.)

By Mr. Thiess:

Q. In that voucher you authorized the payment of $25,000 in the Root case and for other services? A. Yes.

Q. What other services did Mr. Morgan Kaufman ren der? A. Well, I will say this to you: I didn't know, but I wanted to protect against his coming in and bringing in an other bill for other services, and I wanted a sharp breaking off point, and make it an omnibus release. That is why I put that in. He may have rendered other services, I can't

tell you, but in taking that release, I did it to protect against any other suits for back services.

Q. But this was no release signed by Morgan S. Kaufman? A. That is the authority for the check.

Q. The only release you got from Morgan S. Kaufman is this longhand receipt, isn't it? A. Well, that is a receipt, that is a release.

Q. That is your release, Amici Exhibit 4? A. How is that?

Q. The release, if any, you got from Morgan S. Kaufman is Amici Exhibit 8, the receipt, not Amici Exhibit 4? A. You are too legal for me. I am not a lawyer. You once 944
asked me whether I was a lawyer, and I told you I am not, and never have been.

Q. Now, you had started to testify about the payment of $5,000 for some other services to Mr. Kaufman with respect to the Mid-Continent suit, as I understand it——

The Master: If you are starting on a different phase, maybe we better suspend at this time.

(Adjourned to Thursday, May 14, 1942, at 10:00 o'clock A. M.) 945

946

Transcript of Hearing, May 14, 1942

Meeting held before Thomas Raeburn White, Esq., Master, 1930 Land Title Building, Philadelphia, Pa., on Thursday, May 14, 1942, at 10:00 o'clock A. M.

Present:

THOMAS RAEBURN WHITE, ESQ., Master.

J. BERNHARD THIESS, ESQ.
(77 West Washington Street,
947 Chicago, Ill.),

SIDNEY NEUMAN, ESQ.
(77 West Washington Street,
Chicago, Ill.),

ROBERT W. POORE, ESQ.
(77 West Washington Street,
Chicago, Ill.),

amici curiae.

EDWARD J. O'MARA, ESQ.
(15 Exchange Place,
Jersey City, New Jersey), and

948

JOHN R. MCCULLOUGH, ESQ.
(100 Broadway, New York City),
Representing the Universal Oil
Products Company.

HIRAM J. HALLE, resumed.

Direct Examination (Continued)

Mr. Thiess: In view of the fact that I have not been permitted to inspect the diaries that Mr. Halle

referred to yesterday, I would now like permission to look at the entries in the diaries which refer specifically to Mr. Kaufman, which are the following:

April 15, 1935
October 16, 1935
October 22, 1935
March 10, 1936
March 18, 1936
July 22, 1936
December 1, 1936 950
December 3, 1936, and also the entry on December 19, 1934, which refers to a meeting of counsel in the Root case, and also the one on September 12, 1935.

Mr. O'Mara: May I say for the record—and I think Mr. Harris said yesterday the same thing, if he did not, I want to say it now—that these diaries, while they are the personal diaries of Mr. Halle, Mr. Halle is perfectly willing to submit them for the inspection of the master in the first instance to have a right of unreserved examination of the diaries, and any entry whatsoever in any of the diaries which the master considers relevant to the subject matter of the inquiry we have no objection to being subjected to the inspection of Mr. Thiess. These entries, of course, we are willing to submit to your inspection right now. 951

Mr. Thiess: Thank you.

(Records were shown to counsel.)

By Mr. Thiess:

Q. Mr. Halle, regarding these diaries that you have kept, how were they prepared?. I notice they are all typewritten.
A. Yes.

952 *Hiram J. Halle—For Amici Curiae—Direct*

Q. How were these entries made in your diary? A. Dictated by me to the stenographer.

Q. Did you dictate them daily? A. Well, it was the intention, and when I can, I do it daily, but sometimes a few days pass and I get the accumulation, and dictate it. They are my personal diaries, and no one has access to them to see my diaries.

Q. In other words, as I gather from that statement that you have just made, that no one up to the present time except yourself has had access to these diaries? A. No one has had
953 access to these diaries.

Q. Will you please refer to your diaries and see whether you find an entry with respect to the denial of the petition for re-hearing in the Root case, which should be there some time around about August 6 of 1935? A. I think that was brought up yesterday, and I told you I had no entry.

Q. Will you look again to be sure you haven't got any? A. Yes, certainly. Will you give me about the time?

Q. It would be after August 6th; August 6th, 7th, 8th or 9th, probably. A. What year?

Q. 1935. A. I find nothing in the month of August, and I have gotten up to September 10th and find nothing.

954 Q. You have referred to a conversation with Mr. Kaufman in August of 1935. A. Yes.

Q. Which entry is not in your diary? A. Yes.

Q. Can you fix that conversation with Mr. Kaufman with respect to the denial of the petition for re-hearing, whether it was before or after? A. I cannot.

Q. You have no way of doing it? A. No, I have no way of doing it.

Q. You have no way of fixing that date in August? A. Not the exact date, no.

Q. But you do believe that it occurred in August? A. Yes, I do.

Q. What is it that stimulates your recollection that it occurred in August? A. Well, because of my checking it up with Mr. Whitney and Mr. Dwight on the 12th of September, and that was a thing I wanted to take up as quickly as possible with them because Mr. Kaufman had asked me if I would arrange to get him a check. So, it must have been within a few days or very shortly before that meeting.

Q. Well, then, it might have been in September or the latter part of August, is that right? A. Well, I can't fix the date.

Q. Now, referring to this meeting that you had with 956
counsel, with Judge Haight, Mr. Whitney and Mr. Dwight, that occurred on September 12, 1935? A. Yes.

Q. And at that time they approved the payment of the $25,000 to Morgan Kaufman? A. They consented to it.

Q. Now, can you tell us why it was that you did not promptly send Kaufman the $25,000 check after this conference with the attorneys when they had consented on September 12, 1935? A. I can't tell you why; in the ordinary course of business.

Q. Didn't you just state that Mr. Kaufman desired to have his money as soon as possible? A. Well, that is my impression. Now, I don't know whether he said he was
957
urgent about it, or he would like to have his money, I can't say whether I am correct in saying as soon as possible, or whether he did not say as soon as possible.

Q. Well, I don't know whether that was your exact language, Mr. Halle, but I understood you to say Mr. Kaufman was in a hurry for his money, and I am just asking you whether you can in any way refresh your recollection as to why this long interval after the consent to pay the $35,000 and the actual payment thereof. A. I can't recall just what the cause was.

Q. When we adjourned last evening I started to ask you about the payment to Morgan S. Kaufman for services and

retainer rendered in the Crew-Levick case in the amount of $25,000 in the year 1936; that is correct, is it not? A. I don't think that you are stating it correctly.

Q. Well, will you state what the correct statement is with respect to the payment of $25,000 in 1936? A. Well, $10,000 was for the retainer for 1936.

Q. And that was paid when? That was paid in March. I can refresh your recollection that was paid in March. A. 1936, yes.

Q. Have you any recollection why it was paid in March
959 and not earlier in the year? A. I have no definite recollection.

Q. Now, will you explain the payment of the rest of the $25,000 in 1936? A. The next payment I think was $5,000.

Q. Yes, and that was in July? A. That was in July, and that was, I think, when he was arguing that he felt he was entitled to compensation in connection with our settlement of the Mid-Continent case.

Q. Do you remember when that was that he argued that? A. I would say it must have been some time before the time he got that $5,000.

Q. What did he say in argument that he was entitled to?
960 A. Just what I told you, because of the general influence of the course of the litigation, and it enabled us to make a settlement which he thought was very favorable.

Q. In the course of what litigation? A. Of all litigation.

Q. Well, he had only appeared in your litigation, as I understand it thus far, in the Root case as a retainer. A. I don't recall, nor do I recall that I stated that I was informed he was retained only for the Root case. It was on our general litigation on patent suits.

Q. Well, what sort of an argument did he present to you to be paid $5,000 out of the settlement of the Mid-Continent case? A. Well, it wasn't a very lengthy argument;

he made the statement and thought he should be and he would like to be paid for it, and we arranged on $5,000 to be paid to him on that account.

Q. Didn't he tell you why he thought he should be paid this $5,000? A. I don't recall any details in connection with it.

Q. Did you feel that he was entitled to $5,000? A. Well, I can't recall the state of my mind at the time. He didn't participate in it, and yet if one of the other attorneys, Mr. Hall or Mr. Thomas had come and said, "You were able to make that settlement due to work we have done through the years. I think I ought to have a special fee on that," I would 962 have taken care of that.

Q. Did that occur? A. It did not occur and has not occurred with the others.

Q. Let me ask you, Mr. Halle, isn't it a fact that at the time that you paid Morgan S. Kaufman $25,000, you took from him a receipt in order that he should not come to you to ask for any additional fees in other cases? A. Wasn't that before the Mid-Continent settlement was made?

Q. That was before. A. That was only up to the time he got that check of $25,000 that it was a receipt in full.

Q. Well, what services did he render in the interim that would justify $5,000? A. He didn't render, nor did any of 963 the other attorneys render any service. I carried on that negotiation.

Q. And, as I understand, then, you just paid him this $5,000—— A. Excepting , I may say this, on deliberation, we were preparing for the hearing in the Mid-Continent case to go into court, and in connection with preparing for the hearing it may be—I don't know—he may have been consulted by the other attorneys. I didn't consult him, but we were actively preparing, and that is what precipitated the negotiation which resulted in the settlement of the Mid-Continent. We were ready to go into court.

Q. Who were the lawyers who were active in preparing for the hearing in the Mid-Continent case? A. Well, Judge Haight, Mr. Hall and Mr. Thomas were the leading ones. I think perhaps Blenko, also; was he with us? I don't know, I didn't participate in their plans when they got ready to set a date or try a case. I don't participate in that.

Q. Do you know, Mr. Halle, the only activity in the Mid-Continent case was the taking of depositions in Tulsa, which were attended by Mr. Hall and Mr. Thomas? A. I don't know, but I accept your statement on that, that that is correct, but it is the setting of a date and going forward to a
965 hearing that brought on the negotiation, as it has in other settlements. When you set a time for trial, that is when things become active.

Q. And these depositions were taken during that period? A. I don't know anything about those depositions, or what activity there was, or who took part in the case. We were getting ready to set a date there for a hearing.

Q. Mr. Halle, Mr. Thomas and Mr. Hall were the ones active in that case? A. I assume so, and Judge Haight.

Q. And you have no knowledge whatsoever of Mr. Kaufman being active in that case in any way? A. I have no knowledge. Whether they conferred with him or not, I don't
966 know.

Q. And that Mid-Continent case was settled, and you got your check in January of 1936, did you not? A. Yes. Negotiations started, I think, in November or October of 1935. That I recall.

Q. And the $5,000 was not paid to Kaufman until July of that year; that is correct, is it not? A. Yes, that's right.

Q. Do you know the reason for the long interval? A. He didn't bring up any request for it until about that time.

Q. Do you remember when and where this meeting occurred between you and Mr. Kaufman at which he made this

request for the $5,000? A. Well, whatever discussion there was, was in my office.

Q. Have you any diary entry with respect to that? A. To that particular thing? No. I have as to his having called there. Didn't he call there? Yes, he was there at the office, we discussed things.

Q. Now, you have an entry on July 22, 1936, that you phoned Mr. Kaufman? A. Yes.

Q. Do you believe that had anything to do with the payment of this? A. I don't recall; my call to him may have been in response to a telephone call to me, and I may not have been in the office when he called. I have no recollection of the details of it, and I have no record of it. 968

Q. Now, will you please explain the other $10,060 that was paid to Mr. Kaufman in 1936? A. That was paid at the end of 1936 as a retainer for 1937 when we expected great activity in our suits against the Empire, Cities Service, Crew-Levick Corporation.

Q. Can you tell me why it was that Morgan Kaufman was paid this retainer in 1936 rather than 1937? He had already received $15,000 in 1936. A. Yes. I guess he asked whether he could have his retainer then instead of waiting. I don't know, it may have been for tax purposes that he wanted to get it into that year. There are all those things that enter into it, like Reed, when we settled with Mr. Reed he asked for payment covering three years. He didn't want his taxes all in one year. I don't check those things as to the motives back of them. 969

Q. Mr. Kaufman got the $25,000 all in 1936? A. He got the $25,000 in three payments in 1936, but the $10,000 payment at the end of the year was for his 1937 retainer.

Q. Have you any diary entry with respect to this request for the last $10,000 payment to Mr. Morgan Kaufman in 1936? I see you have two entries, one on December 1st and one on December 3, 1936. Will you look to see whether they had anything to do with the payment of this last $10,000

to Morgan S. Kaufman in 1936? A. December 1st, the entry states Morgan Kaufman called; December 3—when was the check paid?

Mr. McCullough: The check was dated December 2nd.

The Witness: Well, then——

By Mr. Thiess:

Q. That check, as I understand it, was sent from Chicago? A. Yes.

971 Q. Did you deliver that check to him personally? A. I think not. I think the check I ordered to be mailed to him, and my explanation——

Q. The letter shows it was sent. A. Yes. I told them to mail it direct to him.

Q. Now, the record shows it was sent to New York.

Mr. McCullough: No.

Mr. Neuman: Look at the accompanying letter. It is Exhibit 29.

The Witness: Exhibit 31, this is Healy to Lenske, we received and mailed to Mr. Kaufman your check and letter accompanying your memorandum. That is Exhibit 31.

972

By Mr. Thiess:

Q. And this Exhibit 29 says, addressed to Mr. Healy from Lenske:

"We enclose herewith the letter addressed to Mr. Morgan S. Kaufman, to which is attached a check for $10,000, in full payment of his services for 1936 and for retainer for 1937, as per your telephone request."

Now, I take it that that letter indicates that the letter to Morgan Kaufman together with the check was sent to the New York office. A. That is apparently correct.

Q. That is what I am asking you. A. It didn't pass through my hands at all. It went to my secretary, and he mailed it.

Mr. McCullough: I think you should state Exhibit 31 shows that Mr. Healy mailed the letter to Mr. Kaufman.

Mr. Thiess: That is all right. I am trying to ascertain whether Mr. Halle saw this, of course, and whether he directed it personally.

The Witness: I have no recollection of seeing the check. It came according to instructions, and was 974
mailed to Mr. Kaufman by my secretary.

By Mr. Thiess:

Q. What do your entries of December 1st and 3rd show? A. The December 1st entry states Morgan Kaufman called.

Q. And what is the next one on December 3rd? A. December 3rd states Judge Haight and Mr. Kaufman at office before my arrival.

Q. Now, the check and the letter to Mr. Kaufman were sent to you, addressed and sent to Mr. Healy? A. It wasn't addressed or sent to me.

Q Mr. Healy is who? A. My secretary.

Mr. Behrens: Assistant treasurer of the company. 975

By Mr. Thiess:

Q. Well, it was sent to Mr. Healy? A. Yes, and that is very clear on the document before you. So, it wasn't sent to me.

Q. All right, it was sent to your secretary, and whatever he is, treasurer. A. Assistant treasurer.

Q. On December 2, 1936, and that letter and check would therefore have arrived in your New York office on the next day, would they not? A. I assume so, I don't know when they arrived.

976 *Hiram J. Halle—For Amici Curiae—Direct*

Q. Do you know any reason why in this particular instance you sent the check by mail rather than hand it to Kaufman, personally? A. Well, if I had handed it to him personally I would have had to send for him to come in to get the check. We don't ask our creditors to come in and get their payments.

Q. Wasn't he there on December 3rd? A. Yes, but I didn't know, and Healy didn't know he was going to be there, and he didn't come to see me. Judge Haight and he were together in an office. I found they were there when I arrived. I told you yesterday I may have shaken hands with him,
977 that is all.

Q. Now, as I understand your testimony, after this $10,000 on December 2 had been paid to Morgan S. Kaufman, either Judge Haight or you and Judge Haight arranged to pay Mr. Morgan S. Kaufman for his service on a quantum meruit basis? A. I didn't use that language, I am not an attorney.

Q. Let's put it another way: after that time you arranged to pay him only for services rendered, is that right? A. What I did tell him was that with this payment there would be no future obligation on our part to pay him any retainer; whatever service he rendered we would pay for.

978 Q. Do you know when it was that you made this arrangement? A. Yes, December 1st, when I agreed to pay him that $10,000, and that was to be a cut-off period beyond that $10,000.

Q. Did you confirm that in any way by letter or memorandum? A. No, my dealings with men generally are such that I don't have to confirm what I say, and usually I try to accept their word that they don't have to confirm what they say. That applies to the biggest transactions I have ever made.

Q. Was Judge Haight there at the time that you made this arrangement? A. No, he was not.

Q. Did you discuss that arrangement with Judge Haight before you told Mr. Kaufman that you were going to pay him for services, only? A. I undoubtedly did.

Q. Have you any recollection? A. None at all other than to discuss that the payment of the $10,000 may be made immediately after Kaufman was there, I may have phoned to Judge Haight, I don't know.

Q. Did you discuss it with any of the rest of your counsel? A. No, I didn't discuss any of those matters with anybody in our company.

Q. Not even with any of the officials of the Universal Oil Company? A. Only the directors, Mr. Dwight and Mr. Whitney, as indicated, and with regard to the payment of the $25,000. 980

By Mr. McCullough:

Q. 1935? A. 1935.

By Mr. Thiess:

Q. I have in mind did you discuss with them the matter—— A. No, I don't recall discussing that with them. I tell you, although it may be difficult for you to believe, I do things and then report them afterwards, usually.

Q. That is to your directors? A. To my directors, and I have been trying to get them to release me for years so that I can retire, and they haven't consented to do it yet, and I will state further on the record that I have no stock interest in the company, I have no profit participation in the company. I am purely a salaried man, a hired man, and I am trying to get out, and I think I am entitled to get out, but as long as I am there—and they understand that—what I decide, prevails. It is very unique. 981

Q. Mr. Halle, I just want to call your attention to Amici Exhibit 30, a letter dated December 2, 1936, addressed to Morgan S. Kaufman, and sending him check for services

982 *Hiram J. Halle—For Amici Curiae—Direct*

rendered during the year 1936, and for retainer for 1937, and I want to ask you whether that is the only document you had respecting the payment of this last $10,000, and the fact that Mr. Morgan Kaufman was not to be paid on a retainer basis after that time. A. It is the only one I know of, and I believe sincerely, it is the only one there ever was.

Q. Now, Mr. Halle, when did you first learn about the opinion which was rendered by the Circuit Court of Appeals in the Root case? A. Well, I read from my diary, I guess the day it was rendered they phoned me from Wilmington or Philadelphia, where was it?

983 Mr. Behrens: I think the call came from Wilmington.

The Witness: I don't know, I was phoned to.

Mr. O'Mara: Look at your diary entry in June, 1935, Mr. Halle. That might refresh your recollection; late June.

Mr. McCullough: June 26, I think, Mr. Halle.

The Witness: I will repeat what I read into the record yesterday: Wednesday, June 26, 1935, Hall telephoned. It doesn't say where from, whether it was Washington, or whether it was Philadelphia, or where; I don't know. Delightful news, decision Circuit Court
984 of Appeals regarding decision sustaining both patents in Root suit.

By Mr. Thiess:

Q. When thereafter did you first see this opinion? A. I couldn't tell you, and I don't recall a line in that opinion. I undoubtedly read it, but whether I got it shortly thereafter or weeks thereafter, I don't know. I was interested that we won it; the reasoning was of less interest, but I did read it, I know I read it.

Q. When did you first read it? A. I can't tell you, and I tell you now I don't remember a line in there, in the decision or in the opinion.

Q. Don't you know at the time the opinion was rendered that it was unanimous? A. Did I?

Q. Yes. A. Undoubtedly.

Q. And did you know at the time the opinion was rendered that Judge Davis wrote the opinion? A. No, his name was not even familiar to me. If you had asked me the names of those three judges, I couldn't even have told you.

Q. Didn't you follow all your litigation pretty closely? A. Not in detail, no.

Q. Mr. Halle, off the record yesterday you made quite a statement here about these tax cases, and you knew the detail of how the court was divided in these various cases, and who the Judges were in the Supreme Court who finally found for you and against you. A. Right.

Q. How is it that your recollection with respect to the opinion in this case, which was of vital interest to you, you did not remember these facts?

Mr. McCullough: I think you ought to state, Mr. Thiess, that it was in connection with an anecdote he was telling of somebody trying the case and who the Judges were.

The Witness: Let me explain off the record——

Mr. Thiess: No, not off the record.

The Witness: Oh, this is on the record. Very simple. The tax case was a personal thing of mine in which I was financially interested with my associates who owned the company. We sold it, we had paid our federal income tax on all the moneys we received. Shortly after the distribution I suggested to my associates we had a nice party, we fared well, I would like to suggest that we take a group that has been associated with us through the years no longer on our payroll, and give them a piece of cake or a slice of bacon, and they were all in agreement, and we selected the list, and we appropriated out of our personal

funds, I think it was, $660,000 as a gift to them, we having paid the tax on that money when we received it, and in giving it to them and in calling in the different people we said, "We have had a party and we have a piece of cake for you. Here is your share."

It ran from a few thousand up to $100,000, and no tax is to be paid by you, this is a gift in appreciation of our relationship through the years.

That was paid, and, as I said yesterday, there was one engineer that had been killed ten years before in operating a unit, and——

989

By Mr. Thiess:

Q. Mr. Halle, this isn't in answer to my question. A. It is. Let me put it down.

Q. All right. A. And I asked if his sister was still alive, and we found her, and gave her five or ten thousand dollars.

Then came the federal inspectors and they began to send notices to different people that they wanted them to pay their tax.

Then I said no. Well, then, we conferred as to whether we should pay it or whether we should contest it. I said if we pay it, then there is another tax, and then it piles up,

990 and it isn't right. It is a gift, purely a gift.

So, we contested it. Now, I didn't know that the case was set for hearing, the first case in Boston, until Whitney asked me if I would like to go up there for the hearing before the Circuit Court of Appeals.

Well, I went up there.

The next case was in New York, and he told me about it, and I went down and heard that.

The next I didn't attend, which was in North Carolina, and the next was in New Orleans.

Then the question came up on appeal, and we were doubtful that we could get certiorari there, but Whitney found a

case that differentiated sufficiently on which he made his plea, and it was granted.

Then when the hearing was set, he said, "Would you like to come down and hear me?"

I said, "You couldn't keep me away."

And I went down. That is the first time I had ever heard a hearing in the Supreme Court of the United States.

Then four weeks later he told me that he had won. I was curious to know how the Court had decided. I had reasoned the same as Reichmann had, that here were these socially-minded Judges, Brandeis, Cardozo and Stone, they would 992
like to encourage the giving-away of money to people and not keeping it for your own selfish purposes, and was startled to find that those three, and Judge Black, had decided the other way.

I think it was the second or third week that Judge Black sat. So, there is the explanation to you why I knew all about that. It was my own money that was involved in it.

Q. Well, wasn't this Root case of very vital importance to you? A. It certainly was, but one of many cases in the course of business, certainly, and I did follow it closely, but not the preparation of briefs, the filing of the briefs, the reading of the briefs, the preparing of the case; that wasn't my job; the progress of the case, yes. 993

(Discussion off the record.)

By Mr. Thiess:

Q. Now, Mr. Halle, isn't it a fact that immediately after the opinion had been rendered in the Root case that copies thereof were made by the Universal Oil Products Company and sent to all of your prospective licensees? A. Yes.

Q. And the refiners whom you were to sue?

Mr. O'Mara: You mean the C. C. A. decision?

994 *Hiram J. Halle—For Amici Curiae—Direct*

By Mr. Thiess:

Q. The C. C. A. decision; you authorized that, did you not? A. I did authorize it after a conference with the attorneys, who, as I recall, told me I dare not do that on the lower court decision when that was made, and make use of it, but when the Court of Appeal's decision came down, then they permitted it, and at that time our opponents were trying to get together a group, Skelly and the lot, and give them a license under their process, which we tried to scotch, and we gave the opinion as one of the motives, and
995 sent them a telegram that they had no authority to negotiate or give immunities or rights under ours, and that they could only be had by our license.

Q. At that time didn't you discuss this opinion with your counsel? A. I don't recall discussing the opinion.

Q. Do you remember seeing the opinion in the letter and telegram you sent out? A. I am sure I read the opinion, very sure, but I can't recall a line in it.

Q. And you didn't recall in 1940 who wrote the opinion? A. I did not, no.

Q. Do you know today? A. Well, I was told, yes, but I didn't recall the names of the three Judges; they were not
996 familiar to me.

Q. You have never discussed any of these opinions with your counsel? A. No.

Q. When the government investigation of Judge Davis and Morgan S. Kaufman was started, and you learned thereof through the publicity of the papers, or through the interview by the F. B. I. investigator, Mr. Parkhurst, didn't you discuss with your counsel the fact that Morgan S. Kaufman was under investigation, and didn't they tell you that Judge Davis who was also being investigated was the Judge who wrote the opinion in the Root case? A. You are telling me that was in the public print; I undoubtedly read and knew that.

Mr. Thiess: Will you read the question?

(The question was repeated by the reporter as follows:

"When the government investigation of Judge Davis and Morgan S. Kaufman was started, and you learned thereof through the publicity of the papers, or through the interview by the F. B. I. investigator, Mr. Parkhurst, didn't you discuss with your counsel the fact that Morgan S. Kaufman was under investigation, and didn't they tell you that Judge Davis 998
who was also being investigated was the Judge who wrote the opinion in the Root case?"

A. I undoubtedly knew all that at that time.

By Mr. Thiess:

Q. Did you at any time send any paper of any type whatsoever respecting the Root case to Morgan S. Kaufman? A. Neither I, nor did I authorize anybody else to do so.

Q. When was the last time that you saw Morgan S. Kaufman? A. I saw Morgan Kaufman—I have to go into a little more detail—on St. Patrick's Day in March, 1939. I was taken ill, the doctor said there was a streptococcus germ in 999
my throat, and I went out in the country. He gave me the new remedy, prontosil sulfanilamide which broke down my red corpuscles, and inside of a week I couldn't stand. For six months I was off my feet and they had to give me ten blood transfusions before they got me back. The doctors denied it was the prontosil and I said it was. Today they are all in agreement I was right and they were wrong.

Shortly after that the first evening I went out I went to the theatre with my sister, and in the lobby—it was crowded—somebody said to me, "Good evening, Mr. Halle."

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I looked up at him, and I was puzzled then. I thought it was Morgan Kaufman. I said, "Good evening, Mr. Kaufman."

There was a lady with him, and I said to him, "Are you going to stay here this winter?"

And he said, "I don't know whether I am going South or not." And that was all.

I haven't seen him since, and when I got back to my seat I told my sister this, and I said, "I am not sure whether that was Mr. Kaufman, who was one of the lawyers on our staff or not." I said, "I don't know, but I think it was."

1001 Q. You had difficulty recognizing him? A. I had difficulty recognizing him. The lights were dim, I didn't know. I haven't see him since, or heard from him since.

The Master: You don't desire to cross-examine now?

Mr. O'Mara: I think we will reserve the right, Mr. White.

By the Master:

Q. Mr. Halle, I notice in the voucher of the accounting department dated October 18, 1935, Amici Exhibit 4, which says:

1002

"Please issue voucher in favor of Morgan S. Kaufman for $25,000 on account of legal services to date in connection with the Root, Winkler-Koch case and pending matters. . ."

I hadn't heard of the Winkler-Koch. What was that? A. They were the ones that built the plant, and they were co-defendants in the suit.

Mr. Thiess: I might say that service was never gotten on the Winkler-Koch.

1003

The Witness: I didn't know the legal tie-in, but they were named defendants.

By the Master:

Q. I understand from your testimony, Mr. Halle, that you had nothing to do with the retaining of Kaufman in the first place. A. I did not, nor did I have anything to do with the retaining or hiring of Judge Haight or any of those attorneys.

Q. You didn't know who had been retained until Mr. Belknap told you? A. Until Mr. Belknap told me, yes.

Q. Of course, when you arranged the settlement with him 1004
for $25,000, you had discussed that matter with your counsel, I think you said, as to how much should be paid? A. After the interview with Kaufman.

Q. Yes. A. Yes.

Q. You knew at that time he had performed substantially no service? A. I didn't, no; I hadn't heard of activities of his.

Q. What services did you think he would perform for you in the future? A. In connection with the group of Doherty companies, the Empire, Crew Levick, and Cities Service companies all grouped together—no, not all in Pennsylvania, but some of them operating in Pennsylvania.

Q. What suits did you actually bring in Pennsylvania? 1005
Anything but the Crew Levick case? A. I can't tell you that, Mr. White. In Pennsylvania I don't know whether we had started any other case or not, I didn't bother about the details of those things, or the filing of suits. We did start one, I think, in the Northern District of Indiana, and we had very, very vital interference proceedings in the Patent Office, and other litigation with those companies. They were fighting us constantly.

Q. Well, Mr. Kaufman wasn't a patent lawyer at all, as I understand it, was he? A. So I understand.

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Q. Well, what services did you expect him to perform for you? A. In connection with the litigation in court of these other cases, preparation and the hearing of them.

Q. You mean to act as local counsel? A. I didn't differentiate, that was up to the other attorneys to arrange with him just what his prominence should be, or what his position should be, and activity.

Q. Well, Mr. Kaufman wasn't an outstanding lawyer like Mr. John Davis or Judge Morris? A. Evidently not.

Q. Or Judge Hughes? A. I didn't select him, I didn't
1007 pick him.

Q. I was wondering why you were willing to pay so liberal a retainer to a comparatively unknown attorney who wasn't a patent lawyer for merely local services. A. I didn't arrange to pay him the retainer, that had been arranged, and he was making a claim against the company for this fee.

Q. I was speaking now of the future. A. Well, he having been in and having gotten this substantial amount of money, we thought we could then perhaps cash in on it by his future services.

Q. In other words, the agreement for $10,000 was really part of the settlement for $25,000? A. No, not part of the
1008 settlement for the $25,000.

Q. But a motive for the settlement, you thought? A. I don't know, I may have tempted him by saying now, we are going to keep on with you, and don't you think that $25,000 would be fair considering that you have performed such little service, and he didn't say yes, and he didn't say no. That was my clue to believing that he would accept the $25,000.

Now, don't ask me whether I would have hired him originally if I had met him. I didn't retain Judge Haight, I didn't retain Mr. Hall, I didn't retain any of them.

1009

May I say I didn't know until Judge Haight's death what the basis of his charges were to us. When he wanted some money, he phoned me, or came in, and said, "Can you let me have some money?"

"How much do you want, Judge?"

Well, $10,000, sometimes it was larger, sometimes it may have been less.

I said, "Certainly."

Then when proceedings came in we sat down and discussed them.

I never contested what was due him, but there was never any agreement with him, and I hadn't hired him originally.

1010

Mr. Thiess: We will introduce as Amici Exhibit 33 a certified copy of docket entries in the Supreme Court, that is in Root Refining Company vs. Universal Oil Products Company No. 417 during the October term, 1935; as No. 34, a similar certified copy of the docket entries in the companion case, No. 418, entitled Root Refining Company vs. Universal Oil Products Company; as No. 35, a certified copy of the telegram of the Clerk of the Supreme Court of the United States to the Honorable Thomas G. Haight dated October 21, 1935, advising of the denial of the petitions in those two cases.

1011

(Certified copy of docket entries in the Supreme Court of the United States in the case of Root Refining Company vs. Universal Oil Products Company, No. 417, October term, 1935, was marked Amici Exhibit 33.)

(Certified copy of docket entries in the Supreme Court of the United States, in the case of Root Refining Company vs. Universal Oil Products Company, No. 418, October term, 1935, was marked Amici Exhibit 34.)

1012 *Colloquy*

(Certified copy of telegram dated October 21, 1935, to Honorable Thomas G. Haight from the Clerk of the Supreme Court was marked Amici Exhibit 35.)

Mr. McCullough: May we note on the record, Mr. White, we are going to reserve cross-examination of Mr. Halle until Mr. Harris' physical condition warrants his presence?

Mr. Thiess: May it also be understood that I might have the privilege of further interrogation if it
1013 is found necessary?

Mr. McCullough: Yes.

(Discussion off the record.)

The Master: This is something that has been just obtained through one of my associates from the United States Attorney's office. I don't know whether it is very important or not. It is a policy of the Title Trust Company of Florida to Morgan S. Kaufman.

Mr. Thiess: I would like to offer in evidence as Amici Exhibit 36 a statement by Judge Haight dated May 14, 1941.

Mr. OMara: That is subject to the reservation, I
1014 assume, that applies to all other exhibits?

Mr. Thiess: That is a standing reservation.

Mr. O'Mara: Yes.

(Statement of Judge Thomas G. Haight dated May 14, 1941, was marked Amici Exhibit 36.)

The Master: You have nothing further to offer at present?

Mr. Thiess: No.

The Master: Very well, we will adjourn sine die.

Transcript of Hearing, August 3, 1942

Meeting held before Thomas Raeburn White, Esq., Master, at the office of the Universal Oil Products Company, 310 Michigan Avenue, Chicago, Illinois, on Monday, August 3, 1942, at 10 o'clock A. M.

Present:

THOMAS RAEBURN WHITE, ESQ., Master.

J. BERNHARD THIESS, ESQ.,
(77 West Washington Street,
Chicago, Ill.)

THORLEY VON HOLST, ESQ.,
(77 West Washington Street,
Chicago, Ill.)

SIDNEY NEUMAN, ESQ.,
(77 West Washington Street,
Chicago, Ill.)

ROBERT W. POORE, ESQ.,
(77 West Washington Street,
Chicago, Ill.)

amici curiae.

RALPH S. HARRIS, ESQ.,
(100 Broadway, New York City)
JOHN R. MCCULLOUGH, ESQ.,
(100 Broadway, New York City)

EDWARD J. O'MARA, ESQ.,
(15 Exchange Place,
Jersey City, New Jersey)

Representing the Universal
Oil Products Company.

1018 *B. G. Lenske—For Amici Curiae—Direct*

W. P. GERMAN, ESQ.,

W. MEREDITH BEHRENS, ESQ.,

IRA RUBEL

HIRAM J. HALLE, President,
Universal Oil Products Company.

The Master: All right, Mr. von Holst, you may
1019 proceed if you are ready.

Mr. von Holst: Will you swear the witness.

Evidence on Behalf of Amici Curiae (Continued)

B. G. LENSKE, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. von Holst:

Q. What is your name and residence? A. B. G. Lenske;
1020 7625 South Essex Avenue, Chicago.

Q. What is your position? A. Position is that of accountant and comptroller.

Q. Of Universal Oil Products Company? A. Of Universal Oil Products Company.

Q. What are your duties as comptroller and accountant? A. More or less in charge of accounting matters, financial matters, preparation of financial statements. The general duties that would fall on a comptroller and chief accountant of a large corporation.

Q. Were you comptroller, Mr. Lenske, in 1935 and 1936, of the Universal Oil Products Company? A. I was.

Q. What were your duties then? A. The same duties that I have had since I have been with the company.

Q. How long have you been with Universal? A. Since about May of 1923.

Q. In 1935 and 1936 were you fairly familiar with the accounting procedures followed by Universal in the keeping of its books? A. Yes, sir.

Q. Was Mr. J. J. Mitchell the vice-president and treasurer at that time? A. He was.

Q. Who was Mr. Lindahl in the years 1935 and 1936? That is, what position did he occupy? A. He occupied the 1022
position of cashier and accountant.

Q. Did he so occupy those positions in 1935 and 1936? A. He did.

Q. What is Mr. Lindahl's full name, please? A. Arthur William Lindahl.

Q. How do you spell that? A. L-i-n-d-a-h-l.

Q. Is Mr. Lindahl still with Universal Oil Products Company? A. Yes, sir.

Q. And he has the same position now as he did in 1935 and 1936? A. Yes, sir.

Q. Mr. Lenske, I want to inquire as to the accounting procedure followed by the Universal in 1935 and 1936 in 1023
the matter of issuing checks for attorneys' bills. I wish you would briefly describe what would be done when, for instance, attorneys would send in a bill; where it would go, what authority would be issued for paying it, and how it was sent from department to department. Would you give us an outline of that procedure? A. I can. Upon the receipt of a bill from an attorney the invoice would first of all be referred to Mr. Halle; in New York, possibly through some of the New York employees. At one time Mr. Behrens was there. Mr. Behrens would present the bill to Mr. Halle for approval or disapproval, as the case may be, and when the

bill was approved it would be returned to Chicago for payment.

As to the procedure, do you wish me to go into detail with respect to the accounting mechanics in connection with all that?

Q. Yes. A. Shall we take up the time of this group to go into all those details?

Q. If you please.

Mr. Harris: I don't object to it, if the Master thinks it will shed any light on the proceedings, but
1025 it seems to me unnecessary. We have produced all the books and records and Mr. Lenske could very easily identify any and every possible entry relating to payments to Mr. Kauffman, which is all that is at issue. I should think you would spare all of us on this hot day, a long inquiry about something which may have no relevancy here.

The Master: I shouldn't think it would be very long, if Mr. von Holst thinks it has some bearing on the cause at issue here.

Mr. von Holst: I do, Mr. Master.

By Mr. von Holst:

1026 Q. Will you take it up from the time that the bill is received in Chicago with Mr. Halle's approval? How is that approval of the bills manifested?

Mr. Harris: You mean whether there is any standard practice and whether there is any exception, don't you? These things are never stereotyped, as far as I know.

By Mr. von Holst:

Q. The usual practice, Mr. Lenske, in 1935 and 1936, you stated was that the bills were approved by Mr. Halle

who would O. K. the bills. Now, in what manner was that approval manifested to you in Chicago when the bills came on from New York? A. There would be written on the bills the word "approved", meaning approved for payment, with Mr. Halle's initials directly below.

Q. Will you proceed with the general and usual practice when these bills were received and so marked in Chicago? A. Yes. When a bill is received it is——

Q. Referring to 1935 and 1936? A. Yes. I understand, Mr. von Holst. The bill is to be paid promptly. First of all, that has been one of our good rules. The invoice would be entered in an invoice register. It is then given to the cashier 1028
who has a voucher drawn, or would request, I should say, a voucher to be drawn for the amount of the bill. That voucher would be entered in the cashier's register, which would show the distribution to the proper account, with the corresponding credit to accounts payable account.

Q. Was it the practice in those years to have a voucher requisition as authority for the issuance of vouchers? A. Yes, sir.

Q. Where does the voucher requisition come in? A. The voucher requisition comes in whenever there is a request for payment of an item for which you might not have an invoice, as, for instance, we might make a check to a 1029
charitable organization like the Community Fund or the U. S. O., and items of that nature where we do not receive a bill in the first instance, then we draw a voucher requisition which is merely a request to our cashier to prepare a check in blank amount payable to blank and set forth on this voucher requisition such details as he may have had with regard to the nature of the item and the authority for its payment.

Q. In the case of a voucher requisition in 1935 and 1936, did the party making up the voucher requisition have au-

thority from some official to make such a requisition for a voucher? A. Oh, yes.

Q. Who, during the years mentioned, had charge of making up the voucher requisitions? A. I have written a number myself and my assistant, Mr. Lindahl, has also written a number of requisitions.

Q. After the voucher requisition is made up, that goes to what department? A. Well, it is made up in the accounting department and it is a request for the issuance of a check, and it of course follows through the accounting procedure, through the accounting department.

1031

Q. Does the same person make the voucher requisition as makes up the voucher in those years? A. No, not necessarily. Vouchers are usually typewritten by the stenographers. The voucher requisition is usually written in longhand, in pen and ink; sometimes it is written on a typewriter.

Q. The vouchers are always—will you describe the voucher? That is to say, was it one or two documents, or one side of a document or was it two sides of a document? A. The voucher itself has two sides to it. There is a sort of voucher jacket to which may be attached any invoice or memorandum which one may have at the time the check is

1032 requested.

On the inside of this voucher jacket we have certain details of authority that might appear on the voucher requisition, and on the reverse side of it we have certain other details which relate to the date of payment, the check number, the voucher number, the date of the voucher, to whom the check shall be mailed, name and address, and the account number to which the item is to be charged, with the amount thereof.

Q. The voucher requisition also showed the account to which the amount was to be charged, did it not? A. Gener-

ally, yes, if the account number is known at the time the requisition is issued.

Q. After the voucher was made up in 1935 and 1936, was the next thing in order the making of the check, the drawing of the check? A. Yes, sir.

Q. What department handled that? A. The accounting department.

Q. Was there any special branch of the accounting department? A. No. Mr. Lindahl usually handles the department handling the issuance of checks.

Q. In those years, in issuing checks for the payment of 1034
attorneys' bills, did those checks, when they were sent out to the payee, did they have a voucher attached so that the payee would know what he was being paid for? A. He might get a copy of it in the form of a remittance slip.

Q. But the practice was not to have a check with a perforated voucher attached, such as we sometimes see? A. No, we do not use the perforated check vouchers; we use the voucher jacket and merely take a check from a pad which the bank furnishes. We write up the checks separately.

Q. Going back to the voucher requisition, in those years, how many copies were made, if any, of the voucher requisition? A. No additional copies.

Q. Just the original? A. That's all. 1035

Q. And how many copies, if any, of the vouchers? A. Just the voucher is written. Oh, I beg your pardon, the remittance slip which I mentioned a moment ago is a copy of the voucher. That is on one side of the voucher, which merely states that the item is an advance for traveling expenses or it is in payment of such and such a bill, or in payment of this, that, or whatever it may be—the other thing.

Q. That was a carbon copy, was it, of the voucher—of that part of the voucher? A. Yes. It is called a remittance slip, but it is a short sheet that goes with the voucher.

Q. And accompanies the check that is sent to the payee? A. Ordinarily, yes, sir.

Q. That remittance slip, during those years, did it contain the accounting data, the posting data, that appeared at the bottom of the voucher? A. No, sir.

Q. It merely contained information as to what the check was for? A. That is correct. As, for instance, if the check were in payment of, say a bill dated March 15th in the amount of $500, such information would appear on this remittance slip or remittance advice.

1037 Q. Was that remittance slip the only carbon of that legend appearing upon the voucher that was made, or were other copies made at the same time? A. No, sir, that's the only one.

Q. On the voucher requisitions in 1935 and 1936, there was a place provided for charging the amount to be paid to an appropriate account, I believe you said? A. Yes, sir.

Q. Where would the person making up the voucher requisition get his authority to charge any specific account? A. From the same source, perhaps, where he received the request for the issuance of the check; as, for instance, if Mr. Halle would direct the payment of a check to attorney A for

1038 $500, he might at the same time tell us what account to charge it to, whether it were in connection with a specific suit or——

Q. Was there any other source of information for that charge than Mr. Halle or the person authorized? A. If we were familiar with the matter, Mr. von Holst, it might not be necessary for Mr. Halle to specifically tell us about the item; we might place the charge in the account ourselves, if we had sufficient knowledge of the transaction.

Q. Into what books of account were vouchers for payment of legal expenses, in 1935 and 1936, entered? A. Vouchers are entered in the voucher register.

Q. Were there any other entries made? A. Oh, yes, at the end of the month when the voucher register is closed, the footings from this voucher register are carried into the general ledger.

Q. What would this general ledger contain? A. Well, that contains the accounts of the corporation, the balance sheet accounts, and profit and loss accounts. I assume that you are familiar with terms of that kind.

Q. Yes, sir, I am familiar with those terms. A. That is sufficient.

Q. Would any details enter into the ledger, or was it just—— 1040

Mr. Harris: You mean the general ledger?

Mr. von Holst: The general ledger.

The Witness: Merely a notation from the voucher register is carried into the general ledger each month as the books are closed.

By Mr. von Holst:

Q. I understand that in 1935 and 1936 you had some reserve accounts. Is that so? A. We did.

Q. What were those reserve accounts? 1041

Mr. Harris: You mean the accounts for legal services—reserve for legal services?

Mr. von Holst: Yes.

Mr. Harris: There may have been other reserve accounts.

The Witness: Yes, there were a number of reserve accounts. If you are referring specifically to the reserve for legal bills or litigation expense, as it was also termed, there was a reserve that was created at Mr. Halle's request some years prior to 1935, and I

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believe, from recollection, without referring specifically to the general ledger, it is my recollection that this reserve contained several hundred thousand dollars as a reserve for legal bills which Mr. Halle desired to pay, and he would ask us to charge certain bills to this reserve account whenever he wished the same to be paid and charged thereto.

By Mr. von Holst:

Q. What was the name of that account? A. The reserve
1043 for litigation expense, as far as I can recall. It may have been reserve for legal bills.

Q. Was there only the one reserve account? A. For legal bills?

Q. For legal bills. A. Yes. I can answer that with one qualification, and that is we did set up a small reserve account for one of our foreign attorneys in London who rendered bills quarterly rather than monthly, and in order to anticipate and include in the monthly accounting the estimated sum, we created a reserve for Dr. Mond's bills. Dr. Mond being an attorney, I always regarded that account which was small, as a reserve for legal bills.

1044 Q. At that time, in 1935 and 1936, Universal had a number of cases pending in the Courts, did it not? A. Yes.

Q. Were these cases—the expenses on lawyers' bills in these several cases kept separately and allocated to each case? A. Well, we did carry a subsidiary record for Mr. Halle's use and benefit, so as to determine the costs of certain suits to a certain date. We tried to make the allocation as carefully as we could, but it was more or less a memorandum record.

Q. The purpose was to show approximately the total expenses in that suit? A. The accumulated costs of a certain suit, yes.

1045

Q. You are familiar with the case of Universal Oil Products Company versus Root Refining Company? A. Well, I have heard of the case, yes, sir.

Q. I believe you testified in it, didn't you? A. That is correct.

Q. Was such an account kept of the expenses in the Root case? A. Yes.

Q. Mr. Lenske, still referring to those years, perhaps I can avoid repetition by saying my inquiries are directed to those years. A. Yes, sir.

Q. Will you keep that in mind? A. Yes.

1046

Q. What was the significance of the legend appearing on some of the photostats of the vouchers that have been introduced in evidence in these proceedings, 42-H, reserve for legal bills? A. That is the account number of the reserve for litigation or legal bills.

Q. Did that 42-H refer to any special subdivision of the general account reserve for legal bills? A. Of which general account, Mr. von Holst?

Q. You had, did you not, as I understood you, one reserve account, reserve for legal bills, is that right? A. Yes; that was 42-H, or it may be 42-F in another year; it depends upon how we reclassify it whenever we write up a new chart of accounts.

1047

Q. What I was specifically asking you is what is the significance of that number and letter, 42-H or 42-F? A. It merely indicates a place in our balance sheet structure. When we prepare a new chart of accounts we start with the first item, which is cash; that is usually number 1. I assume you have seen charts of accounts and that you have some familiarity with the accounting set-up?

Q. Yes, but what I am trying to get at now is if you would explain a little more in detail what the significance of 42-H is compared or contrasted with 42-F.

1048 Mr. Harris: Why make a mystery of it? It's perfectly simple. We had a reserve for legal expense or litigation expense which, in 1935, was known as account number 42-H. I will get the checks and I can show it to you. That's all there is to it. It didn't refer to any special subdivision at all. That's the account number.

The Witness: That's correct.

Mr. Harris: If it varied in those years it was simply because a new chart was made up and it might go up to 42-F or G.

1049 The Witness: Or 42-B or C.

Mr. Harris: Instead of 42-H?

The Witness: Yes, depending upon how many reserve accounts you have. You understand, we had reserve accounts for taxes and for insurance and many other items.

Mr. von Holst: I would suggest that unless the examination becomes unduly stupid on my part, that the witness be not assisted by counsel.

Mr. Harris: I am not assisting the witness, and I think the examination has become unduly critical on your part, if I may suggest.

1050 *By Mr. von Holst:*

Q. Mr. Lenske, do I understand then that 42-H would be the number and the letter for reserve for legal expense for one entire year? A. Yes, and it might be for three or four years. The chart of accounts is not revised every year. It might go along for three or four or five years before we find it desirable and necessary to write an entirely new chart of accounts.

Q. What makes it necessary for writing a new chart of accounts? A. The cumbersomeness, might we say, of the old chart of accounts which has been revised from time to time

by the addition of new accounts and the deletion of certain accounts which are no longer needed.

Q. Would you normally expect to change the letter following the 42 during one year? A. Not necessarily.

Q. How many letters did you have to designate 42 accounts in 1935 and 1936? A. I can't answer that without referring to the chart of accounts or the general ledger.

Q. Did the letters have any indication as to the suit in which the charges were incurred? A. No, sir.

Q. Did they have any reference to the type of litigation in which the charges were incurred, as for instance, general legal expenses or infringement expenses? A. No, sir. 1052

Q. Did you have reserves entitled, "Reserve for Infringement Expense" and another entitled, "Reserve for General Legal Expense" in 1935 and 1936? A. Reserve for General Legal Expense, yes; I don't recall that we have a Reserve for Infringement Expense.

Q. You also had no reserve for taxes, did you? A. Oh, yes, for Federal taxes.

Q. And you had a reserve for contingencies? A. I believe that is correct; I would have to look at the general ledger and the chart of accounts to be absolutely certain as to that.

Q. Did you have a reserve for new patent expense? A. 1053
Reserve for new patent expense? I don't recall that one.

Q. You at least had more than one reserve? A. Yes, sir.

Q. How were they distinguished one from the other? A. By their name and title.

Q. The number 42 was common to all of them? A. No; each reserve would have a separate letter; they would all fall under 42, but you would perhaps begin with 42-A and go down through the alphabet, using as many letters as you had reserve accounts.

Q. Was there one reserve account which had a letter to designate general legal expense and another reserve account

with another different letter which designated infringement expense? A. No, I don't recall that we had a reserve for infringement expense.

Mr. von Holst: We would like to see now the originals of the Amici Exhibits mentioned in the form of subpoena that was sent down.

Mr. Harris: I can answer that by saying— referring now to item 1—the following are originals and are in the hands of the United States Attorney in Philadelphia: Subdivision A, Subdivision B, Subdivision C, Subdivisions E, F, G, H, I, J, K, L, M, N,
1055 N, O, P, and Q. We have the document referred to in Subdivision D.

Mr. von Holst: Is that the only one?

Mr. Harris: That is the only one. We have the document referred to in item 2 and we have only the checks referred to in items 3, 4 and 5, and have produced all of those.

Mr. von Holst: Do you have paragraph 2?

Mr. Harris: We have nothing in 1 except D; we have everything else.

The Master: Are you referring now to the subpoena?

1056 Mr. Harris: Yes, sir.

Mr. von Holst: I might say, Master, it is unfortunate that we didn't know that before this hearing. We had intended to examine Mr. Lenske regarding those original documents.

Mr. Harris: You have photostats of them. The photostats were made by Mr. White, and they have all been marked in these proceedings.

Mr. von Holst: Photostats, I believe, were made some time ago, were they not? I don't think that the originals were introduced in the Grand Jury proceedings at all.

1057

Mr. Harris: They may not have been. I never saw them until I saw them in Mr. White's office. I understood that the photostatic copies had been made in the United States Attorney's office.

The Master: Were they the ones I brought over from New York?

Mr. Harris: Yes, they are the ones you brought over from New York and they are the ones that have been marked in this proceeding.

Mr. von Holst: We had a definite reason for requesting the inspection of the originals, and made that manifest in our memorandum of June 27th.

1058

Mr. Harris: Will you state what the definite reason is? I can't imagine what reason you have.

Mr. von Holst: I don't think I am called upon at this time——

Mr. Harris: Then I don't think the Master should pay any attention to your remarks.

Mr. von Holst: I think one is always entitled to view the originals.

Mr. Harris: You have viewed them frequently in the United States Attorney's office.

Mr. von Holst: We have never seen the originals.

Mr. Harris: Mr. Master, are the photostats that you produced the photostats of the documents in the United States Attorney's office?

1059

The Master: They are photostatic copies of what I was furnished by Mr. Gahagan, yes. I don't think I ever saw the originals.

Mr. Harris: We have never seen them.

Mr. Neuman: I know at the Grand Jury proceedings Mr. Behrens testified with regard to the photostats and we assumed photostats had been made at that early date.

Mr. Harris: Mr. Master, I discovered this Friday afternoon when Mr. McCullough came through, while getting together some papers, and so that there would

be no confusion I took the liberty of calling Mr. White and advising him, if he thought it desirable, to have them here perhaps he could get them from the United States Attorney; we had no way of getting them.

The Master: I should think the only thing to do is to complete your examination as far as you can of Mr. Lenske, and if you feel you should examine him on the originals, they are in Philadelphia and we would have to ask Mr. Lenske to come to Philadelphia. You can examine him on anything that is here.

1061 Mr. von Holst: Have you the ones that were introduced in evidence, Mr. Master?

The Master: With me here?

Mr. von Holst: Yes.

The Master: No, I haven't. I am unable to say at this moment which of these documents referred to in number 1 are originals or merely photostats. They were shown to me. I have an idea I have seen the originals of some of them, but I am not sure at this moment which ones I saw.

Mr. von Holst: The Grand Jury testimony shows they used photostats there, and that was the basis for our assumption that the originals were turned back

1062 to Universal at this time.

The Master: After this hearing will you state exactly the documents in their original form you desire to inspect or examine Mr. Lenske concerning, and I will make an effort to get them from the District Attorney if that is where they are. I had no opportunity to inquire after I received Mr. Harris's call.

Mr. Harris: I called you within five minutes after I got the information. As a matter of fact it never occurred to me that they were not out here; I would certainly have made some statement.

The Master: I think the other side assumed they were here.

Mr. Harris: I certainly did on Friday.

By Mr. von Holst:

Q. Mr. Lenske, do you recall a demand by the United States Government for the production of certain voucher requisitions, vouchers, and cancelled checks relating to the payments to Morgan S. Kaufman in 1935 and 1936?

Mr. Harris: I object to that, Your Honor. I don't see any occasion for doubting my word that they are in the possession of the United States Attorney.

Mr. von Holst: That is not my question.

The Master: What is the question, please?

1064

(The question was repeated by the reporter as follows:

"Q. Mr. Lenske, do you recall a demand by the United States Government for the production of certain voucher requisitions, vouchers, and cancelled checks relating to the payments to Morgan S. Kaufman in 1935 and 1936?")

The Master: I think it is leading up to something else.

Mr. von Holst: It is a preliminary question.

The Witness: I do not.

1065

By Mr. von Holst:

Q. You had nothing to do with getting out any of these records in about the year 1940 or 1939? A. I don't recall that I did.

Q. You don't recall these documents having been photostated? A. I didn't have them photostated.

Q. Do you know anything about anyone getting them together under your instructions? A. I don't recall.

Q. Have you satisfied yourself, Mr. Lenske, that these original documents are not in your files? A. Yes, I am satisfied that they are not.

Q. Did you look for them? A. Did I?

Q. Yes. A. No, I did not.

Q. You have not made a search for these documents, when you were notified that you would be called upon to testify here? A. I was only notified here two days ago.

Q. The originals of these documents, these voucher requisitions, vouchers, and cancelled checks would normally be in your custody as comptroller, would they not? A. Yes.

Q. Would you allow them to leave your possession without your knowledge? A. Well, they might leave the possession of the accounting department without my knowledge.

1067

I wouldn't say that I don't have any knowledge of these vouchers which have left our possession. When Mr. Halle calls for a voucher or Mr. Mitchell, they are produced for him and he may return them and they are placed back in the proper files and——

Q. Do you recall now that such a request was made by Mr. Halle or Mr. Mitchell of you for these Kaufman papers? A. No, sir, I wouldn't recall that any request was made.

Q. Is any record made when these originals are removed from the custody of yourself as comptroller? A. Yes, ordinarily a record is made by the clerk in charge of the files.

Q. Was there such a record made in this case?

1068

Mr. Harris: I object to any further questioning along this line because there is no showing that they have been improperly abstracted or that they are not in the United States Attorney's office. If they are down there, they are there; if they are not down there, then there might be some utility to finding out why this man has not produced them; but we say they are in the possession of the United States Attorney and until it appears that they are not, I think it is hectoring the witness and a waste of everybody's time.

The Master: From whom did you receive that information?

Mr. Harris: I received it from Mr. McCullough, and I would like him to state his information.

Mr. McCullough: We had someone from our office go to the Universal office in New York the afternoon before I left to get these documents and he came back and there was indorsed on this subpoena, "Sent to United States Attorney, A. L. Lauritano in Philadelphia on 5/15/41."

This information was received from the New York office of Universal. I presumed if they had been re- 1070
turned, they would be there except as to D of which they found a copy in New York and which I brought with me. It now appears that they all have been sent there. That's the information I have; that is the source of my information also.

I immediately telephoned Mr. Harris and he telephoned Mr. White. I do not know that absolutely but I had no reason to suspect that there was any reason to question that.

The Master: This was May 15, 1941?

Mr. McCullough: Yes.

The Master: That was after the criminal trial, 1071
was it not?

Mr. Neuman: It was while the first trial was in progress.

Mr. McCullough: They were gotten by Mr. Gahagan originally at the first trial.

Mr. von Holst: I might state the purpose of the question is to ascertain whether a record was kept in Mr. Lenske's files, whether at his order or not, of the taking out of the papers.

Mr. Harris: I think it is immaterial.

Mr. von Holst: I think the materiality of it may later appear. It is preliminary.

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The Master: I don't see any objection to that.

Mr. Harris: It is just these things which seem little at the time, but which when allowed to accumulate, can cause great error. You are just adding one error to another. It is just one small thing, but it later may run to one hour's questioning about things that are wholly immaterial at this point, and I don't object to the answering of this one question, but if we have one hundred useless questions, it means Your Honor's time is spent and our time is spent and the client's money is spent to no purpose.

1073 The Master: Suppose we hear the answer to the question and we will see what it is.

The Witness: Will you restate the question?

Mr. von Holst: Will you read the question back?

(The question was repeated by the reporter as follows:

"Q. Was there such a record made in this case?")

By Mr. von Holst:

Q. By that I mean a record made at the time that these originals were taken from your custody in May, 1941, as Mr.
1074 McCullough has stated, or earlier. A. I don't know off-hand; I presume there was.

Q. Will you ascertain if such record was made and if so produce it at the afternoon hearing?

Mr. Harris: I certainly hope there will be no afternoon hearing; I have another appointment at 1:30.

Mr. von Holst: I will amend that by saying at the hearing which is resumed after recess.

Mr. Harris: That's the reason it seems to me that all this we could get if we produced Mr. Lenske at Philadelphia. If these documents are there, they are are there and if they are not there you can examine

him about what his books and records show as much as you want then; but at this time it seems to me it serves no useful purpose. We are not concealing Mr. Lenske from this hearing.

Mr. von Holst: The question is directed to any records here showing the taking away of these papers.

Mr. Harris: It is immaterial; they are in the United States Attorney's office.

The Master: It may be immaterial but I think perhaps it might be well to clear up anything that is here so that we won't have to come back here again.

Mr. Harris: We will bring anything to Philadelphia that is here that these gentlemen request. We would be glad to produce this stuff in Philadelphia. 1076

Mr. Thiess: I think it pertinent that while Mr. Lenske is here, we ascertain whether there was any record made of these papers, and if there was such a record made I think we should see it at the present time.

The Master: Certainly it is. It is material, and I think Mr. Lenske can probably very quickly ascertain that.

By Mr. Harris:

1077

Q. Can you get somebody working on that right away?
A. Yes, I can.

Mr. Harris: Will you excuse him at this time?
The Master: Yes.

(The witness left the room for a short while at 11:10 o'clock A. M.)

Mr. von Holst: Perhaps, to save time, if we could be looking at these originals of these pencil memorandums——

Mr. Harris: All right, we will let you see that. I hand, pursuant to his request, to Mr. von Holst a pencil memorandum referred to in item 2 of this purported subpoena. A photostatic copy of this, as I recall it, has already been produced and at least Mr. Halle and possibly Mr. Behrens have been questioned about it. You will find that the original is in every respect similar to the photostat which you have examined. I believe it was marked Amici-Exhibit 29. This memorandum is not in the record.

Mr. von Holst: This memorandum has never been
1079 produced.

Mr. Harris: We very gladly produce it.

Mr. von Holst: We would like to offer in evidence this pencil memorandum as Amici-Exhibit 37.

(A pencil memorandum produced by Mr. Harris was marked Amici-Exhibit No. 37.)

By Mr. von Holst:

Q. Mr. Lenske, I will have to refer you to photostats of certain of these documents I wish to ask you about. Do you object to my standing here? A. Not at all.

1080 Q. I refer you to a photostat of a document that is marked Amici-Exhibit 4. Will you tell me in whose handwriting that is, if you know (indicating)? A. Yes; that is in Mr. Lindahl's, Arthur Lindahl's handwriting.

Q. Now, is that Mr. Lindahl's signature in the first space following after the word "approved"? A. Yes, sir.

Q. Then there is another line following the word "approved". Whose initials are those, do you know? A. Yes, those are the initials of Mr. John Mitchell: "J. M."

Q. He was the treasurer and vice-president? A. Yes, sir.

Q. Over at the left here there are another two initials, as far as I can see. Can you identify those? A. Yes. Those

initials, "J. B." stand for Jesse Baxter, one of our employees in the pay roll accounting department who usually checks over the items before they are paid.

Q. What is his position? A. Jesse Baxter is in the pay roll department at the present time. At this time I think he handled the pay roll as well as checked over certain bills for addition and computation and so forth.

Q. In this voucher requisition—that is the correct designation of this document, isn't it? A. Yes, sir.

Q. The blank has the words "on account of" printed or typed? A. Yes.

Q. And following after those words, the one making up 1082
the requisition indicates in what matter the charge is to be paid, is that right? A. That's right.

Q. At the bottom of this voucher requisition we find the words in capital letters, either typed or printed—— A. Printed.

Q. Printed? A. Yes.

Q. These are printed forms? A. Yes, stencil, mimeographed, I believe.

Q. The words "charge to". A. That's right.

Q. And following after that is the legend, "42-H reserve for legal bills."

That is the practice you formerly described, is that correct? A. That's correct. 1083

Q. And in this connection, do you know where Mr. Lindahl got his authority from to charge this amount to 42-H, reserve for legal bills? A. I don't know other than the initials or approval here by Mr. Mitchell; since this requisition bears his initials, I would assume that Mr. Mitchell directed him to charge it to 42-H, reserve for legal bills.

Q. Is Mr. Lindahl still with Universal? A. He is.

Q. Here in Chicago? A. Yes.

Q. Did this voucher requisition Amici-Exhibit 4, the original of it, come to your attention at the time? A. I would say that it did if I were in the office at that time. I may

have been on a week's vacation or so, I don't know, but I would certainly get to see it as soon as I returned.

Q. Do you recall that the interlineation "Winkler Koch" was added to this document afterwards?

Mr. Harris: After when?

Mr. von Holst: After it was written in the first instance.

Mr. Harris: And after the check was issued?

By Mr. von Holst:

1085 Q. My question now is whether it was added at any time after the original requisition was written up. A. Yes, I think it was.

Q. Do you know when it was added? A. No, I couldn't tell you that exactly.

Q. Was it added before or after the check was written? A. I wouldn't know.

Q. Is that interlineation in Mr. Lindahl's handwriting, to your knowledge? A. No, I think the words "Winkler Koch" are in my own handwriting. It looks very much like my writing.

Q. Do you have any recollection as to why that was in-
1086 serted? What information was given you that caused you to insert "Winkler Koch"? A. I don't recall now, Mr. von Holst, at all. This was 1935 and it is seven years ago. It is possibly some additional information that came to me and I decided it was necessary to have it on the record for the information of our accountants.

Q. Referring to Amici-Exhibit 5, that is the carbon of the remittance slip, is it not, and constitutes the voucher of the voucher requisition, Amici-Exhibit 4? A. Yes, that is the voucher which was typed in response to this requisition for a check, and I believe the wording that appears on this requisition follows verbatim.

Q. It would normally, would it not? A. I believe it does.

Q. I call your attention to the fact that "Winkler Koch" does not appear on the voucher, Amici-Exhibit 5. A. Yes.

Q. Would that indicate to you that the addition was made on Amici-Exhibit 4 by inserting the words "Winkler Koch" after the voucher and check were issued? A. It is possible.

Q. Well, isn't it more than possible, in accordance with your accounting procedure? What I mean to say, Mr. Lenske, if this had been on Amici-Exhibit 4, the voucher requisition—by "this" I mean "Winkler Koch"—— A. Yes.

Q. —it would be perfectly normal for any person making 1088
up the voucher to make the interlineation, to insert it? A. Yes, but on the other hand, the stenographer might have typed the thing without picking up the interlineation.

Q. You think that is a possibility? A. I do, sir.

The Master: What was the "Winkler Koch" matter? Did that relate to the Root case in any way?

Mr. Behrens: It is the formal title of the case.

Mr. von Holst: It was the Universal Oil Products Company vs. Root Refining Company and Winkler Koch Engineering Company, and the Winkler Koch Engineering Company was never served.

1089

By Mr. von Holst:

Q. This is true, is it not, Mr. Lenske, that the legend appearing on Amici-Exhibit 5, which is the voucher, is the same normally as the words following "on account of" on the voucher requisition? A. Yes, sir.

Q. And that legend on Amici-Exhibit 5, the voucher, does not include the legend on Amici-Exhibit 4, the voucher requisition following the words "charge to"?

Mr. Harris: I am objecting to this. Why waste everybody's time on that?

Mr. von Holst: I merely wish to ascertain the normal procedure in respect to these particular documents.

The Master: He is just comparing the documents. They do speak for themselves, but the question is directed, I think, to simply comparing the documents.

Mr. Harris: All right.

By Mr. von Holst:

Q. I will amend the question to ask whether these two
1091 documents, Amici-Exhibits 4 and 5, reflect the normal procedure in the issuance of voucher requisitions and vouchers in 1935 and 1936? A. They do.

Q. In that Amici-Exhibit 5 does not contain anything except the words following "on account of" on the voucher requisition and does not include the words following "charge to", is that correct? A. No, the words "charge to" do appear on the reverse side of this voucher which bears certain printing of which you have a photostat here.

Q. That photostat being Amici-Exhibit 6? A. That is the reverse side of this voucher, Amici-Exhibit 5.

Q. In other words, so that the record may be clear, you
1092 are stating that Amici-Exhibit 5 and Amici-Exhibit 6 are the reverse sides of one sheet of paper? A. Yes; that is one piece of paper.

Q. One side of the piece of paper is Amici-Exhibit 5? A. Yes.

Q. And the other is Amici-Exhibit 6? A. And there you will find 42-H.

Q. On Amici-Exhibit 6? A. Yes.

Q. But on Amici-Exhibit 5, that being a carbon copy of the remittance slip that goes to the customer or the payee of the check, you naturally don't include your own accounting data. A. That is correct.

Q. Therefore it stops with the material which appears following "on account of" on the voucher requisition? A. Yes.

Q. And does not include the language "charge to 42-H reserve for legal bills"? A. It does not.

Q. The purpose is that the payee of the check is in nowise interested or concerned in how you charge your payments? A. That is correct.

The Master: May I interject a question?

Mr. von Holst: Yes.

1094

By the Master:

Q. Mr. Lenske, do the words "on account of" as used in Amici-Exhibit 4, suggest to your mind that the payment made was only a partial payment? A. No, sir; no, sir, Your Honor. The words "on account of" is a general phrase that might apply, for instance, to an advance for traveling expenses to one of our engineers who is working in the field and he needs fifty or one hundred dollars. The words "on account of" are merely a little phrase which we use to start the description of the item.

By Mr. Harris:

1095

Q. It may or may not be payment in full? A. That's right.

The Master: That is all.

By Mr. von Holst:

Q. I notice in Amici-Exhibit 4 on the bottom of the page is the mimeographed legend "total advance", and it is not used in this particular document. A. That's right.

Q. What is that provided for? A. As I explained a moment ago, if we gave an employee who was sent to, we will say, another State on an assignment, and we gave him,

say, $100 and subsequently he ran short of money and needed another $50 to complete his job, we would draw another voucher requisition for the additional $50 and there we would show the total of $150 so as to indicate to our officers and executives the sum total of money which had been advanced to this employee to date.

Q. I notice on Amici-Exhibit 4 the check number appears in the handwriting of Mr. Lindahl. Is that right? A. Yes; that's his handwriting.

Q. It says, "Check #4317". A. That's right.

Q. Normally the check number wouldn't appear on the
1097 voucher requisition, would it? A. It might and it might not.

Q. Well, in this particular case, Amici-Exhibit 4, it would mean, would it not, that Amici-Exhibit 6 was made up before the voucher requisition, Amici-Exhibit 4? A. It could have been. If I may interrupt—if I understood your question correctly, you are asking whether this check requisition was written before the voucher was written, itself?

Q. Before the voucher requisition was written.

Mr. Harris: No.

The Witness: The other way around. This check #4317, whether that was written before the voucher
1098 was written?

By Mr. von Holst:

Q. Was it? A. It might have been; in all probability it was.

Q. How would they get the check number 4317 on the voucher requisition? A. Mr. Lindahl has the checks in his drawer. He merely opens the drawer and takes the next check from his pad, gives it to the girl to write the check and at the same time will reach for his pen and perhaps put the check number on the requisition.

Q. Well, then, is the check issued before the document here, Amici-Exhibit 6, which, as you have testified, is the converse side of the voucher? A. The check is usually written after the voucher is written.

Q. In fact, the person who draws the check gets his authority from the voucher, doesn't he? A. Yes, but inasmuch as Mr. Lindahl handled this, he may have put that check number on the requisition at the very same time that he requested the check to be drawn.

Q. Let me ask you this: I refer you to Amici-Exhibit 6; that is the reverse side of the voucher. A. Yes, sir.

Q. Do you call it the distribution record? A. It could 1100
be called that.

Q. You don't usually call it that? A. It is the distribution of the item that is being paid.

Q. Normally, it is a fact, is it not, that this distribution would be filled out and the person making it would enter the check number at the top, 4317, and then the voucher number which, in this case is 10095, before the check was drawn, would he not? A. No, the check may have been drawn and the check number inserted after the check was drawn.

Q. Well, at least this is true, Mr. Lenske, isn't it, that in the normal procedure in 1935 and 1936 a document like Amici-Exhibit 6 would be the authority for the drawing of
a check like the cancelled check, Amici-Exhibit 7, isn't that 1101
right? A. Would you repeat that question, please?

Mr. von Holst: Will you read the question?

(The question was repeated by the reporter as follows:

"Q. Well, at least this is true, Mr. Lenske, isn't it, that in the normal procedure in 1935 and 1936 a document like Amici-Exhibit 6 would be the authority for the drawing of a check like the cancelled check, Amici-Exhibit 7, isn't that right?")

The Witness: Yes; number 5 and 6 being the voucher, that would be drawn before the check is drawn.

By Mr. von Holst:

Q. Now, then, the voucher on one side has the check number, is that right? A. That's right.

Q. In entering that check number on the voucher, does the person drawing up this voucher have a list of numbers so that he can know exactly when the next check should be
1103 entered at the top? A. Yes; has the blank checks in his desk.

Q. Then he enters the next check number at the top of the document like Amici-Exhibit 6, is that right? A. The voucher clerk would enter this check number. May I state this accounting procedure goes through more than one hand. Up to this time, we have been talking about Mr. Lindahl. I just wonder whether you are—you just have Mr. Lindahl in mind, and not perhaps, some other employee. This number 4317, that is the check number, and this voucher number 10095——

Q. Appearing on Amici-Exhibit—— A. Exhibit number 6, were placed by the voucher clerk who made the entries in
1104 the voucher register and examined the voucher and placed the voucher number on the voucher in pen and ink and at the same time wrote in the check number in pen and ink; and where it says, "Date paid 10/18/35" which is October 18, 1935, he filled in that blank space.

By Mr. Harris:

Q. At the same time did he write any number on the requisition? A. No, sir, the number was written—the check number was written on the requisition by Mr. Lindahl who has charge of writing of the checks.

Q. Would he turn these over with the blank check, to be filled out? A. Yes. 1105

By Mr. von Holst:

Q. Do you know as a matter of your own recollection when Mr. Lindahl added that check number? A. No, sir, I do not.

Q. You have no knowledge of that at all? A. No.

Q. Would you have any reason for the putting of the check number on the voucher requisition, Amici-Exhibit 4? A. No, I wouldn't.

Q. It doesn't serve any useful purpose, does it? A. No, 1106
because all that information is on the voucher itself.

Q. It wasn't the custom—— A. It is mere duplication.

Q. It wasn't the custom to put the check number on the voucher requisition? A. No; it might have been a matter of convenience for the bookkeeper at the time. I don't know what the circumstances were.

Q. You stated a moment ago, coming back to Amici-Exhibit 4, that the interlineation on this voucher requisition, "Winkler Koch' was in your handwriting? A. It appears to be, yes, sir.

Q. May I ask, after these documents were drawn up, was it the practice to make changes in them? A. If it pertained 1107
to the distribution of the account, or information that was necessary for the keeping of the accounts and records.

Q. Who would have——

Mr. Harris: As I understand it, Mr. von Holst, no change was made here, merely a more complete description of the litigation was put in. He designated the terminology in this particular instance.

By Mr. von Holst:

Q. Who would have authority, in your organization, to make such additions or alterations to the regular records of

your company? A. Well, I would, I would say, on any question referring to pure accounting. Any question referring to payment or alteration of amount would be entirely Mr. Halle's or Mr. Mitchell's, the vice-president.

Q. But you would have had authority to put that wording, "Winkler Koch" on? A. Without question.

Q. Without authority from anyone else? A. Oh, yes, sir.

Q. There is one other question on Amici-Exhibit 4, the voucher requisition. Was the date generally filled in on these voucher requisitions by the person that drew the requisition and on the day that he did it? A. Yes.

1109 Q. It normally would be in handwriting instead of by a stamp? A. No, we use a date stamp almost exclusiyely to save time.

Q. This Amici-Exhibit 6 and the "charge to 42-H reserve $25,000" which appears thereon, what other items were entered in that account?

Mr. Harris: 42-H?

Mr. von Holst: 42-H reserve.

Mr. Harris: I object to any further testimony on that. He has already described the accounting details. We are not going to let the witness testify to the names of all the lawyers we paid.

1110 The Master: I think a general description of the account is probably what he wants. I do not think it would be proper to ask about other lawyers in that account.

By Mr. von Holst:

Q. Just answer the question, will you, Mr. Lenske? What charges would appear in that account, 42-H? A. Such charges as might be directed by Mr. Halle.

Q. Pertaining to what? A. Mainly legal bills.

Q. Legal bills in all cases or in any special case? A. I would say that in any case that Mr. Halle might direct.

1111

Q. I call your attention to the fact that the voucher requisition, Amici-Exhibit 4, specifies that the payment is to be for "legal services to date in connection with Root Winkler Koch case and pending matters."

Does this legend "42-H reserve" have any connection with the Root case? A. It could and did. It is the reserve for legal bills, therefore items of this nature were charged thereto.

Q. Would it contain charges in other cases? A. Yes, it could.

Q. If it were another case rather than the Root case, for instance this Universal-Standard litigation, that was pending 1112
in Chicago at that time, would lawyers' fees in that case be charged to 42-H? A. Well, no, I don't believe that the reserve account was in effect at that time. You are going back to 19——

Q. My example was unfortunate. Maybe you can help me. There were other cases pending by Universal at that time? A. Yes.

Q. Were lawyers' fees in those cases also charged to 42-H? A. Yes, they could have been.

Q. Is it not a fact that no legal account or lawyers' fee was charged to 42-H except at Mr. Halle's direction? A. Yes.

By the Master: 1113

Q. Were all legal services charged to that account in that year, or were only special ones? A. Just special items.

Q. Special items? A. Yes.

Q. At the direction of Mr. Halle? A. Yes.

Q. And other counsel might have been paid out of current expense, perhaps? A. Yes.

Q. Or charged to current expense? That was the only account of that nature that you had, as I understand it. A. That is correct.

1114 *B. G. Lenske—For Amici Curiae—Direct*

By Mr. von Holst:

Q. Are you prepared to testify whether the other lawyers' fees in the Root case were charged to 42-H, reserve for legal bills in 1935?

Mr. Harris: Will you read that question?

(The question was repeated by the reporter as follows:

"Are you prepared to testify whether the other lawyers' fees in the Root case were charged to
1115 42-H, reserve for legal bills in 1935?")

The Witness: There were certain charges to this reserve. I would have to, to be certain, refer to the account itself to tell you exactly what charges were made thereto.

By Mr. von Holst:

Q. Will you do so? A. The first item that appears—shall I read all the items?

Mr. Harris: No, just answer yes or no.

The Witness: Yes, there were other items charged
1116 in 1935.

By Mr. Harris:

Q. Other than what? A. Other than the item to Morgan S. Kaufman, $25,000.

Mr. von Holst: May we see that document which the witness has referred to?

Mr. Harris: I think I would prefer to show it to the Master and leave it to his judgment. I don't like our opponents involved in all sorts of litigation all around the landscape to use that to try to obtain means of bringing other suits against us.

The Master: Is your objection based on the fact that this discloses the amount of fees that were paid to other counsel?

Mr. Harris: No, sir; certainly not. I just feel, Mr. Master, that our business ought not to be thrown open to the inspection of our opponents unless it is going to forward this investigation. If, in your judgment, it does, then we say go ahead.

The Master: I have looked at this document. I don't see that there is anything in it that would disclose any business secrets. Nearly all the names are familiar to me already. If you don't object to the 1118
amount of the fees being disclosed, I don't see any objection.

Mr. von Holst: We have no objection to the amount of the fees.

Mr. Harris: Will you rely on the Master to read into the record the names of the attorneys who were paid during that period, and which amounts were charged to this account? I believe it is 1935, 1936, and 1937.

The Master: 1934, 1935, and 1936.

Mr. von Holst: Before the Master does that, may I ask a few additional questions of the witness regarding 1119
those two sheets?

The Master: Yes.

By Mr. von Holst:

Q. Mr. Lenske, I may have misunderstood you, but I thought you said earlier in your testimony that the account 42-H only gave totals and did not show—that they were posted from the voucher register. Is that a fact? A. That's right; that the voucher register is posted in total.

Q. These two sheets that you have produced, are those the original sheets from 42-H and the books of account which contain account 42-H, or is this recapitulation, with

additional data put in? A. No, that happens to be the photostat of the original ledger sheet, but our bookkeeper has written in as a matter of information, the names of the attorneys to whom certain payments are made.

Q. So this is not a photostat of the original sheets? A. Yes.

Mr. Harris: We will get the original sheets.

The Master: It appears to be.

By Mr. von Holst:

1121 Q. But it has other data added on? A. No, it is a photostat of the original sheet as it appears in the ledger, with nothing added.

By Mr. Harris:

Q. The "U" refers to the voucher number? A. Voucher number.

Mr. Harris: Suppose I read this into the record, with the Master watching me, and see if that will meet Mr. von Holst's request.

Mr. von Holst: I would like the Master to take
1122 all the time necessary to examine the original.

The Master: If there is nothing to be omitted, I wonder what objection there is to showing it to him.

Mr. Harris: He doesn't want to see the amounts.

The Master: All right, except as to Mr. Morgan S. Kaufman.

Mr. Harris: 1935, October 18, Morgan S. Kaufman, U-10095, $25,000.

November 12, R. R. Brewster, U-11018; dollars blank.

November 31, Wall, Haight, Carey & Hartpence, 11460; dollars blank.

December 3, Thomas G. Haight, 12005; dollars blank.

Mr. Master, you will verify that contains all the charges shown by the original general ledger for the year 1935.

The Master: 1935, yes.

Mr. Harris: 1936, the charges against that account are as follows:

January 4, H. M. Morris, 1009. That is probably the voucher number for the new year. The first number indicates the month, which would mean January; 1009; dollars blank. 1124

February 29, Thomas G. Haight, 2430; dollars blank.

March 18, Morgan S. Kaufman, 3120, $10,000.

July 27, Morgan S. Kaufman, 7203, $5,000.

December 2, Morgan S. Kaufman, 12005, $10,000.

December 31, Thomas G. Haight, 12387; dollars blank.

December 31, Hughes, Schurman & Dwight, 12547; dollars blank.

I would like to point out, so that Mr. von Holst and Mr. Thiess will have the picture between them, that on the credit side there was, in accordance, as I recall Mr. Halle's testimony, with his instructions, 1125 certain items which he told them from time to time to start putting certain monies in this account until he gave them further notice, and beginning with the last day of the month for the year 1935 all the way through 1935, there was credited to the account each month the sum of $5,000. They were all marked "Infringement suits". There was a balance at the beginning of the period of more than $100,000 and there was a balance at the end of the period of nearer $200,000.

By Mr. von Holst:

Q. Those that have been read into the record are the only entries for the years 1935 and 1936 in the account entitled, "42-H Reserve for legal bills," is that right? A. Yes. Mr. Harris read the record.

Mr. Harris: Except in 1936 the account was known as account 42-F.

I might say for your benefit during 1935 the total expenditures of the company for legal services
1127 amounted to $380,210.58 and in 1936, $445,863.58.

Mr. von Holst: Was that all under 42-H?

Mr. Harris: During 1935, $85,644.58 was charged to account 42-H, the reserve for legal bills, and during 1936 approximately $49,000—I can't add all the figures in my head—approximately $49,000 was charged to account 42-F, which was the corresponding account in 1936 to account 42-H in 1935; and as a matter of fact, it just continues right along, as the Master has seen, in the book.

By Mr. von Holst:

1128 Q. Mr. Lenske, in answering any of the questions, if you want to refer to those papers, you are welcome to do so. A. Yes.

Q. Did I understand that not all the charges to attorneys in the Root case in 1935 and 1936 were charged to 42-H or 42-F? I did not hear the name of Mr. Hall or Mr. Charles M. Thomas, or Mr. Eugene Ennalls Berl read by Mr. Harris. Will you state to what accounts those attorneys' bills were charged in those two years? A. It would depend on whether they were working on an infringement case or whether it were general legal matters. We have an infringement account and we also have a general legal account.

Q. You have an infringement account and a general legal account? A. Yes, sir.

Q. And those entries that have been read from 42-H and 42-F are the general legal account, is that right?

Mr. Harris: Reserve for legal bills.

The Witness: Reserve for general legal bills or general legal expense.

Mr. von Holst: I might be spared interruptions by counsel.

By Mr. von Holst: 1130

Q. You just stated that you had an infringement account and you had a general legal account. A. General legal expense account.

Q. Let us take the infringement account first; the infringement expense, is it? A. Infringement expense.

Q. Infringement expense. Is that or is that not the name of the account from which Mr. Harris has read these entries for 1935 and 1936? A. It is not.

The Master: May I interject a question?

Mr. von Holst: Yes.

By the Master: 1131

Q. It is a fact, is it not, that all of the credit items in this account during this period were marked "infringement suits", although the account itself is headed "Reserve for legal bills"? A. Yes, I would say that is correct.

Q. $5,000 a month for infringement suits was paid in the account? A. I can clarify that by stating $5,000 per month was credited to this reserve for legal bills and per contra charged to infringement expense.

Q. That is headed "Infringement suits"? A. Yes. That reserve was set up for pending infringement suits so as to have a fund from which certain payments could be made.

1132 *B. G. Lenske—For Amici Curiae—Direct*

By Mr. von Holst:

Q. But so far as the payments made to these attorneys whom Mr. Harris read, those are charged to general legal expense, is that right? A. They are charged to this reserve for legal expense, 42-F or 42-H.

Q. Yes. When was the change made from 42-H to 42-F? A. I don't know without referring to the record which——

Q. Will you refer to it? A. 1935 reads 42-H and 1936 reads 42-F.

1133 Mr. Harris: I think March, 1936, was when the change was made.

The Witness: Yes, that is correct, Mr. Harris.

By Mr. von Holst:

Q. How do you ascertain March, 1936, was the time of the change? A. I would say that the change was effective January 1st because that's the date on which we usually prepare the new chart of accounts.

Q. Wait one second. You don't find in that sheet that you have examined anything to indicate to you that the change was made in March? A. No, sir.

1134 Mr. Harris: I think there is something——

Mr. von Holst: Just a minute. May we suggest, Master, that Mr. Harris has his privilege of redirect or cross-examination?

Mr. Harris: I am sorry; I am not trying to throw you off the track, I am trying to keep you on the track.

The Master: I think the account does show that.

By Mr. von Holst:

Q. Mr. Lenske, will you examine it and see if you find on the account what it shows, and if so will you read it?

A. On the account it shows the account number 42-F on the sheet beginning March, 1936. The prior sheet which was headed 42-H shows the first two entries of 1936, January and February.

Q. How does that 42-F appear in March on that sheet? Will you read the notation or the entry which gives you that indication? A. Well, it is in typewriting, if that is what you mean.

Q. Just read it. A. Account number 42-F.

Q. And how is that connected up with March, 1936? A. Because the first entry on the debit side is dated March 18 and the first entry on the credit side is March 31 of 1936. 1136

Mr. Harris: Off the record.

(Discussion off the record.)

By Mr. von Holst:

Q. The indication on those sheets that it was changed in March, 1936, is because of the fact that the first entries for 1936 are in March, is that right? A. I would say so, yes.

Q. If there had been an entry in January, 1936, that also would have been 42-F in 1936, is that correct? A. There are two entries—I just read them—in January and one in February, I believe.

Q. That is what I was trying to get at. A. At the bottom 1137 of the first sheet, 42-H.

Q. 1936? A. Yes.

Q. Mr. Lenske, in what account were the bills of Mr. Thomas, Mr. Hall, and Mr. Berl charged 1935 and 1936 for their services in connection with the Root case? A. That question can only be answered by referring to the expense data and noting whether Mr. Charles Thomas did any work in connection with an infringement suit or whether all of his charges relate to patent matters; and when you ask to what account Mr. Thomas's bills were charged, we would have to refer to the bills themselves.

1138 *B. G. Lenske—For Amici Curiae—Direct*

Q. I am referring to the Root case. A. To the Root case?

Q. His charges in the Root case. A. That would go to the infringement account for all the time he spent on the Root case, since it was an infringement case.

Q. In 1936 you have an account for infringement expense, separate and distinct from this 42-H? A. Yes, sir.

Q. What was the number of that account? A. The infringement account was number 16. I believe that can be found in the chart of accounts, however.

Q. Did you have a reserve account for it, too? A. In
1139 what year?

Q. 1936. A. We have it right before us here.

Q. I am at a slight disadvantage because I am not looking at the document. A. Yes.

Q. Did you have a 42-A infringement expense or 42-B or 42-C in 1936? A. No, not 42-A. 42 refers to the reserve account.

Q. Yes. Did you have a 42-A reserve for infringement expense? A. No; may I refer to the chart of accounts?

(Discussion off the record.)

By Mr. von Holst:

1140

Q. You have just referred to the chart. Do you find for 1936 a 42-A reserve for patent litigation? A. Yes, I do. That is the credit account which is set up at the end of each month to transfer the infringement interference, the foreign opposition expense from accounts 16, 17, and 18, which are normally capital accounts—to transfer them to the expense accounts. I notice number 83 is the expense account, the offset for account 42-A, reserve for patent litigation or patent litigation expense, and I notice number 16, 17, and 18, which read:

"16. Infringement litigation.

17. Interference litigation.
18. Opposition proceedings."

By the Master:

Q. Are those accounts also reserves into which regular payments were made monthly? A. No, sir, no payments were made into these accounts, Your Honor.

Q. They were not reserves, then? A. No; that is right, Your Honor.

By Mr. von Holst:

1142

Q. But they were posted to 42-A, which is reserve for patent litigation, is that correct? A. Yes, but that credit is merely an offset to the charges which went into account number 16, 17, and 18, which are the asset accounts, and the reserve offsets the asset account and brings the expenses into the expense group of accounts. More specifically, this account number 83, which is labeled patent litigation expense.

Q. In this account 42-A, reserve for patent litigation, there are no entries relating to Morgan S. Kaufman, are there? A. None whatever.

Q. I wish to come back to a question I asked some time before. Into what account were the legal services in the 1143
Root case of Mr. Charles M. Thomas and Mr. William F. Hall and Mr. Eugene Ennalls Berl charged? I think you said you would have to refer to the invoice. A. Well, if there were charges other than the Root case—if the bill was entirely chargeable to the Root case, there is no question but what it would be charged to account number 16, infringement expense, or infringement account.

Q. Will you produce the book, or such data as you need, to ascertain and inform the Master to what accounts in 1935 and 1936—what reserve accounts or actual expense accounts the charges of these lawyers were entered?

1144 *Colloquy*

Mr. Harris: In the Root case?

Mr. von Holst: That's right.

The Witness: Yes.

Mr. Harris: I assume that the object of the inquiry here in the last analysis is to determine first whether there were any payments to or for the account of Morgan S. Kaufman, or to or for the account of Judge Davis other than the $50,000 which has been disclosed, and second, whether there are any books or records which would indicate the purpose of those payments other than the records which have been
1145 already disclosed.

I do not assume that these gentlemen are interested, or that you are interested in when we paid Mr. Thomas or Mr. Hall or how much we paid them; it is just a question of verifying whether we have accurately disclosed what we paid to Mr. Kaufman or for his account and whether we have properly described those payments from the documents already produced. Is that right?

Mr. von Holst: The immediate question is to what account were the monies paid to the lawyers that did the actual work in the Root case charged.

1146 Mr. Harris: Judge Haight who did most of the work, his fees were charged to 42-H.

Mr. von Holst: It may be that certain charges will be in 42-A for other lawyers. Mr. Hall at one time had the laboring oar.

Mr. Harris: He was paid on a per diem basis. That is easily ascertainable. It was regularly billed for at the time.

The Master: I understand the purpose of the examination is to show whether there was a difference in the treatment of the bills of Mr. Kaufman and other lawyers.

Mr. Harris: I understand that.

Mr. von Holst: Will you read my question?

(The question was repeated by the reporter as follows:

"Q. Will you produce the book, or such data as you need, to ascertain and inform the Master to what accounts in 1935 and 1936—what reserve accounts or actual expense accounts the charges of these lawyers were entered?")

The Witness: Yes. I find that charges of Charles Thomas and Spear, Donaldson and Hall appear in the 1148
account called "Universal vs. Root Refining Company —Winkler Koch" which is an infringement suit account.

By Mr. von Holst:

Q. Are there any for Judge Haight in that same account during 1935 and 1936 and charged to the Root case, or Judge Haight's law firm? A. No, there are not.

Q. Are there any to Kaufman in that account? A. There are no charges to this account in 1935 or 1936 for Mr. Kaufman.

Q. Will you answer as to Mr. Berl of the firm of Ward 1149
and Gray? A. No, I see no charges here for Ward and Gray or Mr. Berl.

Q. What is the number of that account? A. Number 16, Infringement litigation expense.

Q. Do I understand that entries from that account were posted to 42-A reserve for patent litigation? A. No.

Q. Was there any connection at all between that account you have just referred to and 42-A, reserve for patent litigation? A. No, except that the reserve as it is created each month and the reserve as credited to account 42-H, the offset or the debit would perhaps go into this account.

1150 *B. G. Lenske—For Amici Curiae—Direct*

Q. I referred to 42-A. A. I beg your pardon, I thought you said 42-H. 42-A is the account which would exactly offset all of the charges to account 16, 17, and 18 during any one month. That is the reserve account which is credited, and account number 83, patent litigation expense, is debited for the sum total of the monthly infringement interference and opposition expense.

Mr. Behrens: All of that litigation.

The Witness: Yes, all of that litigation.

1151 *By Mr. von Holst:*

Q. Would you refer to that account—what is the number again? A. This is number 16.

Q. And see in 1932, or any other date from 1932 on, if there is anything which refers to Mr. Berl or Ward and Gray or Judge Haight. A. That is a big order. In 1932, the suit was very active. Do you want me to take the time to look through six or seven pages of those citations? It will take some time.

Q. Yes, if you will, please.

Mr. Harris: Why are we going back to 1932? There is nothing in your subpoena about it.

1152 Mr. von Holst: To see in whose name or what account those bills were charged.

Mr. Harris: There is nothing in the subpoena prior to 1935.

Mr. von Holst: It is impossible to tell ahead of examination all of the matters that may be inquired into at the examination.

The Master: The subpoena wouldn't have any bearing on the question. What is the question?

Mr. von Holst: The trial was in 1932. One of the lawyers was Mr. Berl, who may have been paid in 1932. It is all directed to the question of how the law

yers' fees were allocated on the books of the company. The case was tried in 1932 and was active then and we would like to know the answer to that question for those years, to what account it was charged.

The Master: He has the books before him. Even though it is not in the subpoena, I think he can answer the question.

Mr. Thiess: Mr. Berl has already testified he was paid, Your Honor.

For your convenience, you might look under April, 1931.

Mr. Harris: We realize this is a fishing expedition. 1154
We hope some day we can rely, at least as to an approximate extent, on what counsel asks for and let it go at that. We came prepared according to the subpoena, and you ask a lot of questions we have not prepared for. If the books are before us, it's all right, I don't mind. It is all right; I don't make too much of a point of it.

Mr. von Holst: Mr. Berl testified and you may have the bill; the date of the bill was April 2, 1931, $250.

The Witness: April 2, 1931?

Mr. von Holst: The other date of Mr. Berl's payment, according to the testimony, was March 7, 1939; 1155
that is to Ward and Gray.

The Master: The question was to what account was that charged.

The Witness: What date was that?

By Mr. von Holst:

Q. March 7, 1939. That is the date of the invoice. A. I have a Ward and Gray entry for March 15, 1939.

Q. To what account was that charged? A. That is charged to account 16, the Root Winkler Koch suit. There was a retainer and Court costs in July, 1931.

1156 *B. G. Lenske—For Amici Curiae—Direct*

Q. Was that $250? A. No. I find an entry under date of July 21, 1931, for services of Ward and Gray, $125; expense, $25.

Q. Do you find that—— A. In the Root Refining Company Winkler Koch suit.

Q. Account number 16? A. Account number 16, yes.

By the Master:

Q. Would you look at your books and see whether there were any payments to Mr. Haight, Thomas G. Haight, or his
1157 firm entered or recorded in 42-H for the Root case? A. For what year, Your Honor?

Q. 1935 and 1936, but I mean altogether.

Mr. von Holst: That would be starting in 1932. Whether all the payments are included in this account or whether there are some in other accounts.

The Witness: I find an entry for Wall, Haight, Carey & Hartpence under date of June, 1932.

By the Master:

Q. Is that the only one? A. No.

By Mr. von Holst:

1158 Q. What book are you referring to in making that last statement? A. This is the sheet showing the expenses of the Root infringement suit.

Q. Does the book have any name? A. Account 16.

Mr. Harris: The general ledger.

The Witness: It is a sub-ledger. It shows a breakdown showing the details of the respective infringement suits.

Mr. Thiess: It might be well to show the Master, if he wants to see them, these entries as to the Haight firm in this other ledger.

The Master: Yes, I would like to see them.

By Mr. von Holst:

Q. Mr. Lenske, will you just read the remaining entries respecting the Root case? You mention one entry in account 16 for Judge Haight's office during the period from 1932, 1933, and 1934. Do you find any others in that account 16, of Judge Haight's? A. I have not finished looking through all of 1932 and all of 1933 and 1934. We come down to this one point and found one entry. Do you want the answer as to the years 1932, 1933, and 1934? I would have to look through the remaining portion of the record. 1160

The Master: I thought we did that.

The Witness: We didn't go through all the pages. No, I find no other entries indicating payments to Wall, Haight, Carey & Hartpence, or Judge Haight in account number 16 for the years 1932, 1933, and 1934.

The Master: Do I understand that Judge Haight took the laboring oar in the Root case?

Mr. Harris: He and Mr. Hall were probably the most active; I wasn't present.

Mr. Thiess: Judge Haight took care of the general law, to a large extent, and the commercial success and the patent picture on which the case was based, was really in the hands of Mr. Hall and Mr. Thomas. 1161

The Master: The actual litigation was conducted largely by Judge Haight, as I understand it.

Mr. Thiess: Judge Haight examined the witnesses on commercial success. Mr. Thomas and Mr. Hall took care of all of the witnesses, the experts, and so on in the patent phase of the case. At the argument, Judge Haight and Mr. Hall and Mr. Thomas participated.

Mr. Harris: There is an entry in 1934 that was charged to reserve for legal bills, account 42-H; two payments to Judge Haight's law firm.

By Mr. von Holst:

Q. Mr. Lenske, in the Root case there was considerable expense, I imagine, in payment to experts, expert witnesses. Was that also charged to account 16 or does it appear in account 16? A. It would if the bills for the expert witnesses related to the Root case.

1163 Q. Is this account 16 the account that you referred to this morning when you said that you kept an account to give Mr. Halle a general idea, a bird's eye view, of the total expense in any one litigation? A. In any one particular suit? Is that the question?

Q. Yes. A. Yes.

Q. Do I understand that account 16 would give Mr. Halle or any interested officer of Universal the break-down of expenses in the various litigations? A. The details of account 16 would give him all of the information with respect to infringement suits. There might be other litigation other than infringement suits.

1164 Q. But so far as infringement suits are concerned, if he wanted to know something about what a particular infringement suit cost, you would get the information for him from account 16? A. From the details of account 16, yes, sir.

By Mr. Harris:

Q. Does that include the charges made in 42-H and F also? A. No.

Q. You would have to take the two together? A. Yes.

By Mr. von Holst:

Q. In making such a computation would you go to account 16? If Mr. Halle asked you how much did the Root

case cost, what account would you go to?. A. I would go to account 16 and pick up other charges that might appear in 42-H which were proper charges to the particular suit that Mr. Halle inquired about.

Q. But in 42-H are the entries there allocated to any particular suit? A. No, not in the account. The vouchers themselves may give that information.

Q. There is nothing in 42-H from reading 42-H which would tell you what suit was involved at all, is there? A. No.

Mr. von Holst: Master, I am going to a new subject, and this is a good place to recess for lunch if you want to. 1166

The Master: Very well. We will adjourn until 2 o'clock.

(Recess from 12:15 o'clock P. M. to 2 o'clock P. M.)

AFTER RECESS

B. G. LENSKE, Recalled.

1167

Direct Examination by Mr. von Holst (continued):

Q. Mr. Lenske, have you found the data you were asked to get as to whether there is any record in your files showing the withdrawal of the vouchers and requisitions for vouchers and cancelled checks that were delivered to the Government, as I understand it, in May, 1941? A. I believe the question referred to the vouchers.

Q. Yes. A. Is that correct? Just the vouchers?

Q. I intended it to include all the documents that were delivered to the Government at that time. A. I made inquiry of the file clerk as to whether any record was made. She

said there wasn't, they were merely delivered, she said, to Mr. Mitchell.

Q. Mr. J. J. Mitchell? A. Yes.

Q. He was vice-president and treasurer? A. Yes.

Q. He is not with Universal any more, is he? A. No; I understand he has resigned.

Q. Did you ascertain when this delivery to Mr. Mitchell was made? A. No, I did not, but I think it was sometime in 1939.

1169 *By the Master*:

Q. You did ascertain none of these documents are here now? A. Yes.

By Mr. von Holst:

Q. I wonder if you would give us the date in 1934 when the payment to Judge Haight's firm was charged to 42-H. A. I find an entry of March 2, 1934, charged to account 42-H and again October 31; both payments were to Wall, Haight, Carey & Hartpence.

Q. Both in 1934? A. Yes, sir, March 2, and October 31.

Q. I am not quite sure, Mr. Lenske, whether it appears
1170 clearly in the record whether the voucher which Universal keeps as part of its records, or the remittance slips which go to the payee of the checks in 1935 and 1936, is the original; which is the carbon and which is the original? A. The original is the remittance slip.

Q. That goes to the payee? A. Yes. The carbon is the voucher, with the descriptive matter which is copied from the requisition. When the voucher is reversed, on the side where we have our data relating to the date the check is paid, and the voucher number, etc., the name of the payee and the address and the distribution, that is an original of the reverse side.

Q. The other side is the carbon copy of the original remittance slip, is that correct? A. That's correct.

Q. I understand that you have a sub-ledger from which, we will say, you make up the data in account 16. A. Yes.

Q. Is each of those sub-ledgers a suit—let me put it this way, if there is a certain suit pending, will that suit have a sub-ledger? A. Yes, it will.

Mr. Harris: Of its own?

Mr. von Holst: Yes.

The Witness: A sub-account in this ledger.

1172

By Mr. von Holst:

Q. A sub-account of its own? A. That's right. I understood you to say a sub-ledger. I think you meant a sub-account?

Q. Yes, sir. Will you refer to that sub-account for the year 1936 and state all payments appearing therein in the Crew Levick case to Morgan S. Kaufman? Universal Oil Products Company vs. Crew Levick. A. The ledger shows no item, no payment to Morgan S. Kaufman.

Q. In the Crew Levick case? A. Yes, sir.

Q. Does that ledger show entries of payments to Charles Thomas and Thomas G. Haight for the year 1936 in the Crew Levick case? A. It shows payments to Charles M. 1173 Thomas.

By Mr. Harris:

Q. Not to Judge Haight? A. Not to Judge Haight.

By Mr. von Holst:

Q. Does it show any payments to Mr. Hall or his firm? A. Yes, it shows a payment to his firm.

Q. Will you refer to the year 1935 and state whether in that account, the sub-ledger account of the Crew Levick case, there appear any payments to Morgan S. Kaufman? A. No.

Q. The answer is, "No"? A. The answer is, "No." This began in 1936.

Q. Will you see if any payments in 1935 in the Crew Levick case were made to Judge Haight or his firm? A. In 1936?

Q. 1935. A. In 1935 there were none because the first entry is January 31, 1936. Had there been any payments in 1935 they would have appeared on this sheet.

Q. The reason I ask you that, Mr. Lenske, is that the bill was undoubtedly prepared in 1935. A. I understand.

1175 Q. Mr. Lenske, referring you to Amici-Exhibit 4, please state whether you have any recollection that a remittance slip accompanied the check, Amici-Exhibit 7, which bears the same number as the check noted on voucher requisition Amici-Exhibit 4. A. I have no recollection that the remittance slip accompanied the check.

Q. Have you any recollection that it did not? A. No, I don't.

Q. Ordinarily the remittance slip, a photostat of which is Amici-Exhibit 5, in so far as it contains the typewritten legend would accompany that check, Amici-Exhibit 7, would it not? A. Yes.

1176 Q. I call your attention to Amici-Exhibit 7 which is a photostat of the front and reverse side of the check number 4317 and to the fact that the reverse side shows a number 4318. Can you explain what that is (indicating)? A. No, I can not.

(Discussion off the record.)

Mr. Harris: Mr. Master, if that offers a mystery or problem to you, we will get check number 4318.

By Mr. von Holst:

Q. Did you, yourself, give this check for $25,000 to Mr. Mitchell? I call your attention to the fact that Amici-

Exhibit 6 says, "Above check given to Mr. Mitchell". A. No, I can't remember whether I gave it to him or did not.

Q. The check was somewhat large in amount, was it not? Was there anything about the transaction that fixes itself in your memory? Do you remember speaking to Mr. Mitchell about it? A. I don't know that I was even in the office on that day.

Q. You have just no recollection at all about that $25,000 check, is that right? A. Only from the record.

Q. I mean no independent recollection? A. No, sir.

Q. Or no independent recollection refreshed by looking 1178
at these records?

Mr. Harris: There is a contradiction in terms.

Mr. von Holst: I don't mean a statement that he must have done something, by looking at the records.

By Mr. von Holst:

Q. I mean looking at these records, whether you have an independent recollection as to the transaction. A. No, not particularly. The transaction was handled by Mr. John Mitchell.

Q. You had no part in it that you recall? A. No part whatever. 1179

Q. With the exception of the interlineation of "Winkler Koch" on this Amici-Exhibit 4? A. That is true.

Q. Which you said is in your handwriting? A. Yes. I really believe we had another Root suit involving Jenkins, if my memory serves me correctly, so that there would be no confusion by merely stating "Root suit", we indicated "Root —Winkler Koch".

Q. That would hardly be, Mr. Lenske, because the Root case is identified by the name "Root" before the interlineation. A. Yes.

1180

Q. The Jenkins suit did not involve Winkler Koch, did it? A. No, but wasn't there a Root and Jenkins suit? I may be wrong.

Q. I think you are mistaken on that. A. I am relying on memory.

The Master: The witness said he made that interlineation because he understood there was another Root case and he did it to distinguish one from the other.

The Witness: Yes.

1181

By Mr. von Holst:

Q. You know it is a fact that a suit was filed in 1929 against the Root Refining Company on the Egloff patent and that another suit was filed against the same company in 1931 on the Dubbs patent and the suits were consolidated for trial and in both of those the defendants named in the Bill were Root Refining Company and Winkler Koch Engineering Company? Isn't that right? A. I am not familiar with the legal details of the company's litigation.

Q. Do you know of any other case or do your records show any other case against the Root Refining Company than the case that was tried in the District Court of Delaware

1182

before Judge Nields in the lower Court, in which you testified?

Mr. Harris: Does he know that?

Mr. von Holst: He has already stated he testified in the case.

Mr. Harris: Before Judge Nields in Delaware?

The Witness: Yes.

By Mr. von Holst:

Q. You remember that case, do you not, Mr. Lenske? A. Yes, sir, I do.

Q. Do your records show or do you know of any other case than that brought by Universal against Root Refining Company? A. I would have to refer to the record.

Q. May we leave it this way, if you find that there was any other case than the two consolidated cases that were tried before Judge Nields as I have indicated, in 1932, will you inform us if your records show any other case? A. Yes, I shall be glad to.

Q. As I understand you, you do not recall any circumstance which caused you to put that interlineation, "Winkler Koch" on this voucher requisition, Exhibit 4.

1184

Mr. Harris: I object to that. He has answered it three or four times.

The Master: He is repeating his understanding.

Mr. Harris: He said several times what he did. Originally he said he did it to make it clear, and more recently he said he did it because he thought there was another Root case.

The Master: I think he has explained it, as far as that goes.

Mr. Harris: I object to it.

By Mr. von Holst:

1185

Q. Now, Mr. Lenske, I call your attention to Amici-Exhibit 8 which purports to be a photostat of a receipt signed by Mr. Kaufman. Did you ever see this receipt before? A. I don't recall it.

Q. Do you recall requesting Mr. Halle to get a receipt from Morgan Kaufman? A. No, I don't.

Q. Do you recall raising any question at the time as to whether this attorney or person had rendered a bill? A. No.

Q. Does the fact that a receipt was taken refresh your mind in any way on the question I previously asked you as

1186 *B. G. Lenske—For Amici Curiae—Direct*

to whether the remittance slip accompanied the check when it was delivered to Mr. Mitchell?

Mr. Harris: I object. It presupposes that he knew a receipt was taken and he said he didn't know that. You are showing him this Exhibit; then you ask him does it refresh his recollection.

Mr. von Holst: Assuming that Exhibit 8 is a photostat of the receipt delivered by Mr. Kaufman.

Mr. Harris: To whom? I object unless you describe it accurately.

1187 Mr. von Holst: Delivered to one of Universal's agents or attorneys.

Mr. Harris: I object to that. It is not proper testimony. No use trying to fool the witness. I'm tired of it.

The Master: The testimony is that this receipt was given to someone; he has forgotten who it was.

Mr. Harris: I have no doubt as to who gave it. It was written in Mr. Behrens' presence at Mr. Halle's request.

The Master: I think Behrens has so testified.

By Mr. von Holst:

1188 Q. Does this receipt, Amici Exhibit 8, or rather, a photostat of which is Amici Exhibit 8, which was delivered by Mr Kaufman, or assuming it was delivered by Mr. Kaufman to Mr. Behrens, refresh your recollection in any way as to whether a remittance slip accompanied the check, Amici Exhibit 7? A. No, it does not.

Q. Wasn't it customary in your organization for you as comptroller when you were handling a transaction of this size to request some permanent record for your company, showing the receipt of the money, or was it? A. Well, that would be up to Mr. Mitchell, our vice-president, and Mr. Halle; if they were satisfied, I was.

Q. Was any copy kept of the checks in 1935 and 1936, and specifically, was any copy kept of check 4317, Amici-Exhibit 7? A. A photostatic copy?

Q. A photostatic copy or any other kind of copy or record. A. Are you referring to a carbon copy of a check?

Q. Yes. A. None.

Q. With reference to the information regarding a check, I take it your record was the voucher, as you have testified? A. That is correct.

Q. Were these checks taken out of books and do you have the stubs? A. No, the checks come in pads, I believe 50 or 75 checks in a pad, and the pads consisted of merely the 1190
checks without stubs.

Q. The entries concerning the checks are made from what? From the voucher entirely? A. The voucher and from the check itself. Before the check is released, it is entered in the cash disbursements book.

Q. I hand you Amici-Exhibit 9 entitled, "Interoffice Correspondence," which is a photostat, and I will ask you if these are your initials, "B. G. L." appearing at the bottom of that (indicating). A. They are.

Q. This longhand memorandum at the left, can you identify that handwriting? It says—just read it. A. "March 18, 1936. L. M. H. gave Lenske instructions over telephone," 1191
signed "B."

Q. And who is that "B."? A. Mr. Behrens.

Q. Who is "L. M. H."? A. Leo Morgan Healy, who was employed in our New York office as secretary to Mr. Halle.

Q. That was Mr. Healy's position in 1935 and 1936, is that correct? A. He was assistant secretary and treasurer.

Q. On this document, Amici-Exhibit 9, appears in longhand, "U. O. P. v. Crew Levick," with a circle around it. Can you identify that handwriting? A. No, I cannot.

Mr. Behrens: That is Mr. Healy's writing.

1192 *B. G. Lenske—For Amici Curiae—Direct*

Mr. Harris: That is the New York office receiving stamp on the upper right-hand corner.

By Mr. von Holst:

Q. When you sent this letter to Mr. Behrens in New York, that legend, "U. O. P. v. Crew Levick," in long-hand did not appear on the letter, is that right? A. That's right.

Mr. Harris: I think—I doubt if that pencil notation at the lower left-hand corner was on then.

1193 Mr. Behrens: Mr. Behrens was busy with the Durskin people on that day and Mr. Healy opened that letter.

By Mr. von Holst:

Q. Mr. Lenske, was this other long-hand notation, "3/18/36 L. M. H. gave Lenske instructions over telephone. B."—was this on the letter when you sent it out?' A. No.

Q. That stamp appearing at the right-hand corner is the stamp of your New York office, is it? A. That's right.

Mr. Harris: The original of this Exhibit is produced by us pursuant to the subpoena, and it was

1194 found in the New York office and not in the Chicago office.

By Mr. von Holst:

Q. Can you tell me whose initials are R. E. N.? A. Yes, Robert E. Nagel.

Q. What was his position in the New York office, if you know? A. Well, my recollection is that he was a sales engineer, and assisted in the New York office with matters relating to sales and helped Mr. Healy.

Q. Just answer the best of your recollection. Do you know who J. H. F. L. is? A. Yes, that's John H. F. Leonard.

Q. Was he down in the New York office? A. My recollection is that he was, yes.

Q. What was his position, if you know? A. I think he was assisting Mr. Behrens.

Q. According to this letter of yours, you had received a telephone call from Mr. Mitchell when he was in New York; is that right? A. That's what the letter states.

Q. Have you any recollection of what else was said in that connection by Mr. Mitchell to you? A. No, I do not have any recollection since this is six years ago.

Q. You do not recall why Mr. Mitchell asked you not to draw the check until you heard from him? A. No, I don't 1196
recall.

Mr. Harris: Mr. von Holst, you paraphrased that message rather incorrectly. He wasn't to draw the check until he heard from Mr. Behrens and not from Mr. Mitchell.

Mr. von Holst: I think you are right. I am sorry.

By Mr. von Holst:

Q. Does that change your answer in any way? A. Allow me to read it.

Q. Yes. A. No, I do not.

1197

Mr. von Holst: I return the original to Mr. Harris. I do not have occasion to use it.

By Mr. von Holst:

Q. Again referring to Amici-Exhibit 9 and to Mr. Behrens' notation thereon which was "L. M. H. gave Lenske instructions over telephone," and also referring you to Amici-Exhibit 10, is Amici-Exhibit 10 in your handwriting? A. It is.

Q. Now, this Amici-Exhibit 10 has a date added in different ink and pen, apparently. Do you recall whether that date was on the memorandum when you wrote it?

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Mr. Harris: May I see that? Our photostat didn't go high enough to get it in.

Mr. von Holst: I imagine that date was put on by somebody in the United States Attorney's office.

Mr. Harris: It probably was because it does not appear on the photostat we have.

Mr. von Holst: It would if it were there.

The Master: Amici-Exhibit 10 doesn't show.

Mr. Harris: You must have put this on yourself. This is a photostat of a photostat.

1199 (Discussion off the record.)

By Mr. von Holst:

Q. Referring to the two Exhibits, Amici-Exhibit 9 and 10—

Mr. Harris: If I may be bold enough to charge my colleagues on the other side with something, I would suggest that in the future they give us photostats similar to theirs. We have been supplied with photostats of Exhibits that are not similar to the copies they have retained. They are now showing them to us. We have just had them handed to us at the hearing.

Mr. Neuman: We offered in evidence the photostats which you had from the Grand Jury. Those
1200 photostats in turn were photostated by the Court reporter to make up the additional copies. We have made photostats from the photostats that were in the record.

Mr. Harris: Mine doesn't have the marks that yours has.

The Master: The mark is omitted on this but it is of no importance.

By Mr. von Holst:

Q. Referring again to Amici-Exhibit 9 and Amici-Exhibit 10, is Amici-Exhibit 10 your record of the telephone

conversation from Mr. Healy mentioned in your letter to Mr. Behrens or Amici-Exhibit 9?

Mr. Harris: I don't see anything of that sort on Exhibit 9. Will you point it out to me? He said that wasn't on at the time he sent the memorandum out.

Mr. von Holst: I press the question, Master. It is perfectly clear what I am asking.

Will you read the question?

(The question was repeated by the reporter as follows:

1202

"Q. Referring again to Amici-Exhibit 9 and Amici-Exhibit 10, is Amici-Exhibit 10 your record of the telephone conversation from Mr. Healy mentioned in your letter to Mr. Behrens or Amici-Exhibit 9?")

Mr. Harris: I object to the question. It is based on a statement of fact which is not so.

The Master: Perhaps instead of saying, "mentioned in the letter," he might say, "noted on the letter."

Mr. Harris: He didn't put it on. He said this wasn't on at the time he sent it.

1203

By Mr. von Holst:

Q. What I mean, the information in Amici-Exhibit 10, Mr. Lenske, refers to a telephone call from Mr. Healy, doesn't it? A. Yes.

Q. A telephone call to you from Mr. Healy? A. Correct.

Q. Now, on Amici-Exhibit 9 Mr. Behrens has noted the fact that Mr. Healy telephoned you.

Mr. Harris: No. All right.

By Mr. von Holst:

Q. Is that right so far? A. Yes.

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Mr. Harris: Not very long, but it will be all right so far.

By Mr. von Holst:

Q. Is Amici-Exhibit 10, the record which you made of the telephone call from Mr. Healy, referred to in Mr. Behrens' memorandum?

Mr. Harris: I object to that. How on earth can he say that? He can say he had a telephone call. He doesn't know what phone call Behrens referred to, not
1205 being Behrens and not afflicted with attributes of divinity.

Mr. von Holst: We can go about it in a longer way.

By Mr. von Holst:

Q. Did you receive a telephone call from Mr. Healy at about the time or shortly after, I should say, you wrote the letter of March 17, 1936, Amici-Exhibit 9? A. Yes, I would say this is the record of the telephone conversation.

Mr. Harris: Referring to Exhibit 10?

1206 The Witness: Yes, referring to Exhibit 10.

By Mr. von Holst:

Q. That is a record that you made of the telephone call from Mr. Healy, is that right? A. That's right. Yes, that's what the memorandum states.

Q. Do you recall that conversation independently of this memorandum, Amici-Exhibit 10? A. No, it's too long ago to recall it just from memory.

Q. I show you Amici-Exhibit 11 which is a photostat of a voucher requisition dated March 18, 1936. In whose handwriting is that? A. Mr. Arthur W. Lindahl's.

Q. Does it bear your initials? A. It does.

Q. Did you see that requisition for voucher after it was drawn up? A. Yes, sir, I must have seen it for my initials are on it.

Q. I also show you Amici-Exhibit 12 and Amici-Exhibit 13 and ask you whether those two constitute the voucher issued in accordance with the voucher requisition, Amici-Exhibit 11. A. They do.

Q. And Amici-Exhibit 12 is, as I understand it, a carbon of the remittance slip that went out to the payee; is that right? A. If the remittance slip went to the payee; I have 1208
no way of knowing whether it did or did not.

Q. Well, it was usual to send the remittance slip, wasn't it, with the check? A. Yes.

Q. If a remittance slip is not sent with the check in any particular instance, it would be the exception rather than the rule? A. Quite.

Q. This voucher on the side represented by Amici-Exhibit 12 has the same written matter as Amici-Exhibit 11 following after the words on Amici-Exhibit 11, "on account of" down to the end of the line provided for that heading; is that correct? A. Yes, that's right.

Q. This voucher requisition, Amici-Exhibit 11 was made 1209
up on the authority of your telephone conversation, from Mr. Healy, as recorded in Amici-Exhibit 10? A. Yes.

Q. I call your attention to the fact that on Amici-Exhibit 12 which is the voucher, inside of the voucher there does not appear any reference to the Crew Levick case; is that right? A. Not on this side but that same paper has reference to it.

Q. Now, referring to Amici-Exhibit 11, in whose writing is, "U. O. P. v. Crew Levick eq. suit filed 2/20/36"? A. It looks like Mr. Lindahl's handwriting, but I can't be positive about it. It looks very much like Mr. Lindahl's handwriting.

Q. It isn't yours? A. No.

1210

Q. That is not the normal place for such information to appear on a requisition for voucher, is it? A. Yes, it could be. It is merely explanatory of the item.

Q. Isn't the explanation of the item customarily placed in the writing which follows after "on account of" as it did in the first transaction? A. I don't quite understand the question, Mr. von Holst.

Q. Isn't it customary in making these voucher requisitions to show what the services were rendered for, including the name of the particular suit in the body of the voucher requisition following after the words "on account of" and

1211

before you get to the words "charge to"? A. Yes, if that information was available at the time.

Q. I refer you to Amici-Exhibit 13. On Exhibit 13 we have "42-H reserve for legal bills $10,000". Is that not all that customarily appears on this side of the voucher which you call the distribution record? A. That is all that is necessary for the account distribution. The item was charged to 42-H, which is the reserve for legal bills.

Q. Isn't it true that the additional information that appears on this Amici-Exhibit 13 "U. O. P. v. Crew Levick eq. suit filed 2/20/36" does not usually appear upon that side of the voucher? A. That is correct, but it wouldn't have to

1212

appear there; it was merely additional information.

Q. That additional information appears on Amici-Exhibit 11 following the words "charge to" and does not appear on Amici-Exhibit 12, which is the carbon of the remittance slip which goes to the payee and does appear again on Amici-Exhibit 13 which is the distribution record where it ordinarily does not appear. I ask you if you have any explanation for that.

Mr. Harris: First let him answer whether it is so.

Mr. von Holst: It is a recapitulation of his testimony.

Mr. Harris: I don't agree with you.

Mr. von Holst: Read the question, please.

Mr. Harris: Go ahead and make a full explanation, Mr. Lenske. Don't let Mr. von Holst stop you.

(The question was repeated by the reporter as follows:

"Q. That additional information appears on Amici-Exhibit 11 following the words 'charge to' and does not appear on Amici-Exhibit 12, which is the carbon of the remittance slip which goes to the payee and does appear again on Amici-Exhibit 13 which is the distribution record where it ordi- 1214
narily does not appear. I ask you if you have any explanation for that.")

The Witness: The explanation is that the words "U. O. P. v. Crew Levick eq. suit filed 2/20/—" that is February 20, 1936—if I can read this clearly, that relates to the account distribution, the same as the writing just above it which reads, "42-H reserve for legal bills". Information of that nature does not appear on the remittance slip and that is why you don't find it on the face of the voucher, but rather you do find it on the reverse side of the voucher which is Amici-Exhibit 13. 1215

By Mr. von Holst:

Q. Do I understand you to say that that is ordinarily true, that the explanation, for instance, like "U. O. P. v. Crew Levick" would not appear on the remittance slip? A. Yes.

Q. That would not ordinarily appear on the remittance slip that goes to the payee? A. That is correct.

Q. I call your attention to the voucher requisition, Amici-Exhibit 4, which is the voucher requisition for the first payment to Morgan S. Kaufman and ask you whether the identi-

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fication of the suit does not appear following the words "on account of" and before the words "charge to". A. That does appear on the one.

Q. What was the practice of your company? I had understood you previously to testify that the remittance slip was supposed to be the customer's information as to what the payment was for. Is that right or wrong? A. That is correct.

Q. Isn't it true that the customer's remittance slip would customarily show the services in the particular suit in which
1217 they were rendered, as was the fact in Amici-Exhibit 4? A. This, of course, is the check requisition.

Q. Yes, but Mr. Lenske, this legend that follows "on account of" on the check requisition, Amici-Exhibit 4, is the same legend, the carbon of which appears on the remittance slip that goes to the payee. A. That is correct.

Mr. Harris: My recollection is there is no testimony that there was a remittance slip in connection with this $25,000 payment.

By Mr. von Holst:

Q. You were unable to say whether a remittance slip
1218 went out with this first payment? A. I don't know.

Q. But my question is this, a great many checks went out with remittance slips, I assume; did they not? A. Yes.

Q. And if those checks were for services in a particular suit, wouldn't the remittance slip show the suit just as this voucher record, Amici-Exhibit 5, shows it? A. No, not necessarily.

Q. Well then, it is true, is it not, that these words "on account of" on the voucher requisition as on Amici-Exhibit 4, are supposed to contain the legend, or so much as does appear on one side, or put it this way, as does appear on the remittance slip the carbon of which is the voucher record or

the voucher; isn't that right? A. It happens to be correct in this particular instance.

Q. Well, is that the practice or the exception? A. I think it is the exception. Ordinarily a remittance slip, in the case of invoices, would merely recapitulate the details of the invoice and the amounts which are being paid for the benefit of the payee so that when he receives a check he knows which bills are being paid.

Q. But supposing that there was no bill rendered, then wouldn't that be an additional reason for the remittance slip to specify what the payment was for? A. Yes, if the 1220
remittance slip were necessary or if the remittance slip went out with the check; and I don't know that this remittance slip went with the check.

Q. I understood your testimony that you used these requisitions for voucher when invoices were not rendered, is that right? A. Yes.

Q. Therefore, it would be the practice, would it not, to show on the requisition for voucher the suit in which the amount was being paid; is that so? A. Yes. This is explanatory of the payment and does indicate that the payment is in connection with the Root and Winkler Koch suit.

Q. Would you say it was the exception in such instances 1221
where requisition for vouchers were used and no bill was rendered, therefore the requisition for voucher and the remittance slip and the voucher itself portray the case in which the services were rendered? Would that be the exception? A. Well, the name of the suit should appear merely down below where we have the words "charge to". We could indicate the suit to which it was chargeable. It wouldn't have to appear after the words "on account of".

Q. You have testified on the distribution record the reference to the suit was entirely unnecessary, have you not? A. If the charge is to account 42 reserve for legal bills, that's all we needed.

Q. Why would it be the practice to put the suit on the voucher requisition following the words "charge to"? A. That would be merely additional information. We could have got along very well without it.

Q. Mr. Lenske, you couldn't get along without it somewhere on the requisition voucher if there was no bill rendered? You would want to identify the transaction some way, wouldn't you? A. Why wouldn't it be identified? I don't quite understand the question.

Q. Haven't you stated so far as the words "charge to" are concerned, that is purely for accounting purposes? A. 1223 Yes.

Q. That doesn't make any difference what suit it was? A. Yes.

Q. And haven't you already testified and explained to us that when no bill was rendered and the voucher requisition was used, it should identify the matter in which the payment was being made? A. I don't recall.

Q. Well, isn't that the fact? A. Ordinarily such information is given, yes.

Q. And it wouldn't ordinarily appear under the head which is solely for the purpose of accounting, following the words "charge to", but it appears on the part of the instrument the original of which goes to the customer? A. Not 1224 necessarily. This might merely indicate the issuance of a check for $10,000 to Mr. So-and-so and down below where it says "charge to" we get the instructions as to where the item should be charged.

Mr. Harris: I think this has gone far enough, Your Honor, to show that there is not any stereotype practice. The information must be there somewhere. It is there somewhere and that's all that is necessary. I object to any further questions along that line. It is hectoring the witness.

Mr. von Holst: Shall I continue?